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No.

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1987

— 0 —
BEAN DREDGING CORPORATION,
Petitioner,
vs.

MARTHA B. OLSEN, COMMISSIONER
OF REVENUE OF THE STATE OF TENNESSEE,
Respondent.

— 0 —
**PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF TENNESSEE
WESTERN GRAND DIVISION
AT JACKSON**

— 0 —
VOLUME II
— 0 —

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TENNESSEE
SALES & USE
TAX LAWS

(SEAL)

EXTRACTS OF RELATED LAWS
RULES AND REGULATIONS
AND OTHER INFORMATION
1980

TENNESSEE DEPARTMENT OF REVENUE

The names "Department of Finance and Taxation" and "Commissioner of Finance and Taxation", as used in this summary of laws, were changed to "Department of Revenue" and "Commissioner of Revenue" by Chapter 9, Public Acts of 1959, and made effective April 1, 1959, by executive order of the governor.

These designations are to be used interchangeably in this summary of laws.

CHAPTER I

TENNESSEE SALES AND
USE TAX LAWS

(Title 67, Chapter 30, "Tennessee Code Annotated")
Section 1. The Retailer's Sales Tax Act

(§§ 67-3001-67-3048)

SECTION.

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NOTE

The names "Department of Finance and Taxation" and "Commissioner of Finance and Taxation", as used in this summary of laws, were changed to "Department of Revenue" and "Commissioner of Revenue" by Chapter 9, Public Acts of 1959, and made effective April 1, 1959, by executive order of the governor.

These designations are to be used interchangeably in this summary of laws.

67-3001. *Short title—Additional tax.*—This chapter shall be known as the “Retailers’ Sales Tax Act” and the tax imposed by this chapter shall be in addition to all other privilege taxes. [Acts 1947, ch. 3, § 1; C. Supp. 1950, § 1248.50 (Williams, § 1328.22).]

67-3002. *Definition of terms.*—The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(a) “Persons” includes any individual, firm, co-partnership, joint adventure (sic), association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. It is further defined to include any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter.

(b) “Sale” means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional, or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person

furnishing, preparing, or serving such tangible personal property. "Sale" shall also mean such transfer of customized or packaged computer software, which is defined to mean, information and directions loaded into a computer which dictate different functions to be performed by the computer, whether contained on tapes, discs, cards, or other device or material. For such purpose, computer software shall be considered tangible personal property, however, the fabrication of software by a person for his own use or consumption shall not be considered a taxable "use" under subdivision (h) of this section or any other section of this chapter.

A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sale" includes the furnishing of any of the things or services taxable under this chapter.

(c)(1) "Retail sales" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property, and shall mean and include all such transactions as the commissioner of revenue upon investigation finds to be in lieu of sales; provided that sales for resale must be in strict compliance with rules and regulations. Any dealer making a sale for resale which is not in strict compliance with rules and regulations shall himself be liable for and pay the tax.

"Retail sale" or "sale at retail" shall include the furnishing of things or services taxable under this chapter.

"Retail sale" or "sale at retail" includes the delivery in this state of tangible personal property by a retailer

who has no place of business in this state, if the delivery is made to a consumer in this state or to another person for redelivery to a consumer in this state pursuant to a retail sale made by such retailer to such consumer.

Nothing in this paragraph or the preceding paragraph shall be construed to impose a tax which is invalid either under the commerce clause or the due process clause of the United States Constitution. In addition, the department of revenue may enter into a reciprocal agreement with the comparable department of another state to furnish records concerning purchases made by citizens of the other state from a dealer in this state where the dealer collects neither a sales nor a use tax on such sales provided that the other state agrees to furnish the same records to this state and each sale is in excess of five hundred dollars (\$500). Provided further, all dealers in Tennessee making sales to purchasers in another state where no sales or use tax is collected shall furnish the department copies of all such invoices to suitable substitutes for sales in excess of five hundred dollars (\$500) with their monthly returns provided that the department notifies such dealers of the existence of a reciprocal agreement.

(2) The terms "sale at retail," "use," "storage," and "consumption" shall not include the sale, use, storage or consumption of industrial materials and explosives for future processing, manufacture or conversion into articles of tangible personal property for resale where such industrial materials and explosives become a component part of the finished product or are used directly in fabricating, dislodging, sizing, converting, or processing such materials or parts thereof, and such terms shall not include materials, containers, labels, sacks, bags or bottles used for pack-

aging tangible personal property when such property is either sold therein directly to the consumer or when such use is incidental to the sale of such property for resale.

(3) The term "gross sales" means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined herein, without any deduction whatsoever of any kind or character, except as provided in this chapter.

(4) "Retail sale," "sale at retail," and "retail sales price" shall include the following services:

(A) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration. The tax shall not apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more.

(B) Charges for services rendered by persons operating or conducting a garage, parking lot or other place of business for the purpose of parking or storing motor vehicles. The tax shall not apply, however, to charges for such services made by the state and its political subdivisions when providing on-street parking space for which charges are collected or when operating or conducting a garage or parking lot which is unattended and such charges are collected by parking meters.

(C) The furnishing of telephone service to regular subscribers, such service embracing local (flat charge or metered) calls, long-distance calls, leased lines or equipment for the vocal or written transmission of messages,

as well as any additional or incidental services for which a charge is made; and the transmission for a consideration of messages by telegraph;

(D) The performing for a consideration of any repair services with respect to any kind of tangible personal property;

(E) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry-cleaning or car-wash facilities, where a charge is made therefor;

(F) The installing of tangible personal property which remains tangible personal property after installation where a charge is made for such installation whether or not such installation is made as an incident to the sale thereof and whether or not any tangible personal property is transferred in conjunction with such installation service.

(G) The enriching of uranium materials, compounds, or products, which is performed on a cost-plus basis or on a "toll enrichment fee" basis.

(d) "Sales price" means the total amount for which tangible personal property is sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses, or any other expense whatsoever; provided, that cash discounts allowed and taken on sales shall not be included; provided, that the term "sales price" shall not include any additional consideration given by the purchaser for the privilege of making deferred payments regardless

of whether such additional consideration shall be known as interest, time price differential on conditional sales contracts, carrying charges or any other name by which it shall be known.

(e) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

(f) "Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title of such property.

(g) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business.

(h) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it shall not include the sale at retail of that property in the regular course of business.

(i) "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit, or advantage, either direct or indirect. The term "business" shall not be construed in this chapter to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable

services or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. Provided, however, that it shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, (which terms shall be construed to include trailers and special motor equipment sold in conjunction therewith), as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are: married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft which are so based shall constitute evidence thereof. Provided further, however, that it shall not be construed to include those occasional or isolated sales or transactions by such a person involving mobile homes or house trailers, as defined by § 59-421, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller.

(j) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, or use, or consumption, or storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter.

(k) The term "commissioner" means and includes the commissioner of finance and taxation of the state of Tennessee, or his duly authorized assistants.

(l) "Tangible personal property" means and includes personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance, or other obligations or securities.

(m) The term "use tax" referred to in this chapter includes the "use," the "consumption," the "distribution," and the "storage" as herein defined.

(n) "Industrial machinery" shall mean machinery, including repair parts and any necessary repair or taxable installation labor therefor, which is directly and primarily utilized in fabricating or processing tangible personal property for resale, or equipment primarily used for air pollution control or stream pollution control, where the use of such machinery or equipment is by one who engages in such fabrication or processing as his principal business either within or without this state, or such use by a county or municipality or a contractor pursuant to a contract with such county or municipality for use in stream pollution control or sewage systems. "Industrial machinery" shall also mean machinery, the cost of which, for any such single article, exceeds \$1,000.00, which is directly and primarily utilized for the purpose of remanufacturing industrial machinery as defined in the first paragraph of this subsection when such utilization is by one whose principal business is that of remanufacturing industrial machinery.

(o) "Fabricating or processing tangible personal property for resale" shall include only tangible personal property which is fabricated or processed for ultimate use or consumption off the premises of the one engaging in such fabricating or processing.

(p) "Farm equipment and machinery" shall mean any appliance used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises, the retail price of which, for any such single article, exceeds two hundred and fifty dollars (\$250), but shall not include an automobile, truck, household appliances or property which becomes real property when erected or installed. Notwithstanding the foregoing provisions, grain bins and attachments thereto which are sold to or used by a farmer shall be considered "farm equipment and machinery."

(q) Livestock and poultry feed means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with said ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed. [Acts 1947, ch. 3, § 2; C. Supp. 1950, § 1248.51 (Williams, § 1328.23); Acts 1951, ch. 3, § 1; modified; 1955, ch. 51, §§ 1-5; impl. am. Acts 1959, ch. 9, § 14; Acts 1959, ch. 15, § 1; 1963, ch. 38, §§ 1, 2, 7; 1963, ch. 172, §§ 1, 2; 1965, ch. 3, § 1; 1965, ch. 335, § 1; 1968 (Adj. S.), ch. 556, § 1; 1968 (Adj. S.), ch. 601, § 1; 1969, ch. 95, § 1; 1970 (Adj. S.), ch. 390, § 1; 1971, ch. 117, § 1; 1971, ch. 149, § 1; 1971, ch. 151, § 1; 1972 (Adj. S.), ch. 528, § 1; 1972 (Adj. S.), ch. 709, § 1; 1972 (Adj. S.), ch. 731, § 1; 1972 (Adj. S.), ch. 757, § 1; 1972 (Adj. S.), ch. 769, § 1; 1973, ch. 179, § 1; 1074 (Adj. S.), ch. 778, § 1; 1976 (Adj. S.), ch. 442, § 1; 1977, ch. 42, § 1; 1977, ch. 250, § 1; 1978 (Adj. S.), ch. 565, §§ 1, 2; 1978 (Adj. S.), ch. 789, §§ 1, 2; 1978 (Adj. S.), ch. 921, § 1; 1979, ch. 352, § 1; 1980, ch. 602, § 1.]

67-3003. *Levy of tax—Rate.*—It is declared to be the legislative intent that every person is exercising a tax-

able privilege who engages in the business of selling tangible personal property at retail in this state, or who uses or consumes in this state any item or article of tangible personal property as defined in this chapter, irrespective of the ownership thereof or any tax immunity which may be enjoyed by the owner thereof, or who is the recipient of any of the things or services taxable under this chapter, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined in this chapter, or who leases or rents such property, either as lessor or lessee, within the state of Tennessee. For the exercise of said privilege, a tax is levied as follows:

(a) At the rate of three percent (3%) of the sales price of each item or article of tangible personal property when sold at retail in this state; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the state, and to include each and every retail sale. Except that the rate of tax provided for in this paragraph shall be four and one-half percent (4½%) until June 30, 1981, at which time it shall be three percent (3%).

(b) At the rate of three percent (3%) of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state; provided there shall be no duplication of the tax. Except that the rate of tax provided for in this paragraph shall be four and one-half percent (4½%) until June 30, 1981, at which time it shall be three percent (3%).

(c) At the rate of three percent (3%) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to said business. Except that the rate of tax provided for in this paragraph shall be four and one-half percent ($4\frac{1}{2}\%$) until June 30, 1981, at which time it shall be three percent (3%).

(d) At the rate of three percent (3%) of the monthly lease or rental price paid by lessee or renter, or contracted or agreed to be paid by lessee or renter, to the owner of the tangible personal property. Except that the rate of tax provided for in this paragraph shall be four and one-half percent ($4\frac{1}{2}\%$) until June 30, 1981, at which time it shall be three percent (3%).

(e) At the rate of three percent (3%) of the gross charge for all services taxable under this chapter. Except that the rate of tax provided for in this paragraph shall be four and one-half percent ($4\frac{1}{2}\%$) until June 30, 1981, at which time it shall be three percent (3%).

(f) The said tax shall be collected from the dealer as defined herein and paid at the time and in the manner as hereinafter provided.

(g) Notwithstanding other provisions of this chapter, tax imposed with respect to industrial machinery as defined in Section 67-3002 shall be at the following rate:

(a) July 1, 1980-June 30, 1981—.75%

(b) July 1, 1981-June 30, 1982—.50%

(c) July 1, 1982-June 30, 1983—.25%

On and after July 1, 1983 no tax is due with respect to industrial machinery.

Tax at the rate of one percent (1%) is likewise imposed with respect to water when sold to or used by manufacturers. Tax at the rate of one and one-half percent (1½%) shall be imposed with respect to gas, electricity, fuel oil, coal and other energy fuels when sold to or used by manufacturers. For the purpose of this provision a manufacturer is defined as one whose principal business is fabricating or processing tangible personal property for resale. Provided, however, that such substances shall be exempt entirely from the taxes imposed by this chapter whenever it may be established to the satisfaction of the commissioner, by separate metering or otherwise, that they are exclusively used directly in the manufacturing process, coming into direct contact with the article being fabricated or processed by the manufacturer, and being expended in the course of such contact. Whenever the commissioner determines that the use of such substances by a manufacturer meets said test, he shall issue a certificate evidencing the entitlement of the manufacturer to said exemption, and a certified copy thereof shall be furnished by the manufacturer to his supplier of such exempt substances. Said certificate may be revoked by the commissioner at any time upon a finding that the conditions precedent to the exemption no longer exist. His action as to the granting or revoking of a certificate shall be reviewable solely by a petition for common law certiorari addressed to the chancery court of Davidson County.

Provided further that any water or energy fuel used by a manufacturer in fabricating or processing tangible

personal property for resale shall be exempt entirely from the taxes imposed by this chapter when same are produced or extracted by the manufacturer himself from facilities owned by him or in the public domain.

(h) Notwithstanding other provisions of this chapter, tax imposed with respect to farm equipment and machinery as defined in Section 67-3002 shall be at the following rate:

- (a) July 1, 1980-June 30, 1981—.75%
- (b) July 1, 1981-June 30, 1982—.50%
- (c) July 1, 1982-June 30, 1983—.25%

On and after July 1, 1983 no tax is due with respect to farm equipment and machinery.

(i) Tax at the rate of one and one-half percent ($1\frac{1}{2}\%$) shall be imposed with respect to gas, electricity, fuel oil, coal and other energy fuels sold directly to the consumer for residential use. The Commissioner of Revenue is authorized to promulgate such rules and regulations as he considers necessary for the administration of this subsection. [Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1977, ch. 178, § 1; 1978 (Adj. S.), ch. 592, § 1; 1979, ch. 308, §§ 1, 2; 1980, ch. 871, §§ 1, 2; 1980, ch. 886, § 1.]

67-3004. *Application of property by contractor.*—Where a manufacturer, producer, compounder or contractor

erects or applies tangible personal property, which he has manufactured, produced, compounded or severed from the earth, other than: (1) any severed from the earth and moved from one (1) place to another on the same job site; and (2) dirt, soil, earth or any other kind of material when used for construction or fill, whether from the same construction or job site or elsewhere, such person so using the tangible personal property shall pay the tax herein levied on the fair market value of such tangible personal property when used, without any deductions whatsoever, provided, however, the foregoing shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property which becomes a component part of a building, and which is not sold by them as a manufactured item.

Where a contractor or subcontractor hereinafter defined as a dealer, uses tangible personal property in the performance of his contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church and the tangible personal property is for church construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-3003 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid.

Provided, however, that the tax imposed by this section shall have no application where the contractor or

subcontractor, and the purpose for which such tangible personal property is used, would be exempt from the sales or use tax under any other provision of this chapter.

Provided, further, that the tax imposed by this section or by any other provision of this chapter, as amended shall have no application with respect to the use by, or the sale to, a contractor or subcontractor of atomic weapon parts, source materials, special nuclear materials and by-product materials, all as defined by the Atomic Energy Act of 1954, or with respect to such other materials as would be excluded from taxation as industrial materials under paragraph (c)2 of § 67-3002 when the items referred to in this proviso are sold or leased to a contractor or subcontractor for use in, or experimental work in connection with, the manufacturing processes for or on behalf of the atomic energy commission or when any of such items are used by a contractor or subcontractor in such experimental work or manufacturing processes.

Provided, further, that there is hereby exempted from the provisions of this chapter, the sale or use of materials and equipment purchased or used for construction or installation, by a contractor, subcontractor or otherwise, of, in or as part of any electric generating plant or distribution system, any resource recovery facility where steam or electric energy is produced, or any coal gasification plant or distribution system owned or operated by the United States or any agency thereof created by an act of congress, or by the state of Tennessee or any agency or political subdivision thereof, or any authority organized pursuant to the state electric membership corporation law or the electric cooperative law. There is also exempted the sale

or use of materials and equipment purchased or used for construction or installation by a contractor, subcontractor or otherwise, of, in or as a part of any electric generating plant, including the transmission substation, owned or operated by any person so long as such person does not now or intend in the future to generate electricity from a plant located in Tennessee or to distribute electricity to consumers in Tennessee.

Provided further, that notwithstanding § 67-3018, no sales or use tax shall be payable on account of any direct sale or lease of tangible personal property or services to the United States, or any agency thereof created by congress, for consumption or use directly by it through its own government employees. [Acts 1949, ch. 245, § 1; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 242, § 7; 1957, ch. 166, § 1; 1963, ch. 38, § 6; 1963, ch. 174, § 1; 1978 (Adj. S.), ch. 536, § 1; 1978 (Adj. S.), ch. 601, § 1; 1980, ch. 563, § 1; 1980, ch. 812, § 1.]

67-3005. *Use tax on imports.*—On all tangible personal property imported, or caused to be imported from other states or foreign country, and used by him, the “dealer” as defined in § 67-3017, shall pay the tax imposed by this chapter on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption in this state. For the purposes of this chapter, the use, or consumption, or distribution, or storage to be used or consumed in this state of tangible personal property shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event.

It is not the intention of this section to levy the Use Tax with respect to the personal automobile, the personal effects, or the household furniture to be used in the residence of a person who having been a bona fide resident of another state, has moved to and become a resident of Tennessee, and has caused to be imported into Tennessee such personal automobile, personal effects, or household furnishing. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.55 (Williams, § 1328.25); Acts 1967, ch. 117, § 1.]

67-3006. *Effective date of use tax.*—It is further specifically provided that the “use tax” shall not apply to tangible personal property owned or acquired in this state, or imported into this state, or held or stored in this state prior to January 24, 1947. But, the “use tax” will apply to all tangible personal property imported or caused to be imported into this state on or after January 24, 1947, unless said property has previously borne a sales or use tax in another state equal to or greater than the tax imposed by this chapter. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.58 (Williams, § 1328.25).]

67-3007. *Interstate commerce exempt.*—It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export; nor is it the intention of this chapter to levy a tax on bona fide interstate commerce. It is, however, the intention of this chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.56 (Williams, § 1328.25).]

67-3008. *Credits for taxes paid in other states.*—The provisions of this chapter shall not apply in respect to the use or consumption, or distribution, or storage of tangible personal property for use or consumption in this state upon which a like tax equal to or greater than the amount imposed by this chapter has been paid in another state, the proof of payment of such tax to be according to rules and regulations made by the commissioner. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by this chapter, then the dealer shall pay to the commissioner an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by this chapter. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.57 (Williams, § 1328.25); Acts 1957, ch. 63, § 1; 1967, ch. 117, § 2.]

67-3009. *Additional tax.*—The tax so levied is and shall be in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied. [Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24).]

67-3010. *Religious publications exempt.*—The taxes levied under this chapter shall not apply to the use, sale, or distribution of religious publications to or by churches or other religious or charitable institutions for use in the customary religious or charitable activities. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.59 (Williams, § 1328.25).]

67.3011. *Agricultural products exempt.*—(a) The gross proceeds derived from the sale in this state of live-stock, nursery stock, poultry, and other farm or nursery products direct from the farm are exempted from the tax levied by this chapter, provided that such sales are made

directly by the producers. When sales of livestock, nursery stock, poultry, or other farm or nursery products are made to consumers by any other person, as defined herein, other than producer, they are not exempted from the tax imposed by this chapter.

(b) It is specifically provided that the "use tax" as defined herein shall not apply to livestock and livestock products, to poultry and poultry products, to farm, nursery and agricultural products, when produced by the farmer or nurseryman and used by him and members of his family.

(c) Provided, however, that each and every agricultural commodity sold by any person, other than a producer, to any other person, who purchases not for direct consumption but for the purpose of acquiring raw products for use or for sale in the process of preparing, finishing, or manufacturing such agricultural commodity for the ultimate retail consumer trade shall be and is exempted from any and all provisions of this chapter, including payment of the tax applicable to the sale, storage, use, transfer, or any other utilization or handling thereof, except when such agricultural commodity is actually sold as a marketable or finished product to the ultimate consumer, and in no case shall more than one (1) tax be exacted.

The term "agricultural commodity," for the purposes hereof, shall mean horticultural, poultry, and farm products, and livestock and livestock products. [Acts 1947, ch. 3, § 5; C. Supp. 1950, § 1248.60 (Williams, § 1328.26); Acts 1978 (Adj. S.), ch. 921, §§ 2, 3.]

67-3012. *Miscellaneous property exempt.*—(1) The sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of the follow-

ing tangible personal property is specifically exempted from the tax imposed by this chapter:

(a) Gasoline as defined by statute in Tennessee, upon which a privilege tax per gallon is paid, and not refunded, or gasoline or diesel fuel used for "agricultural purposes" as this term is defined in § 67-3602. For purposes of this subpart "diesel fuel" means any petroleum distillate with at least twelve (12) to sixteen (16) carbon atoms per molecule and which has a boiling point of between 350 degrees (350°) and 650 degrees (650°) F. or any petroleum distillate which is ordinarily and customarily sold and used as a source of fuel for diesel engines;

(b) Motor vehicle fuel now taxed per gallon by chapter 37 of this title;

(c) Newspapers;

(d) Seedlings, or plants grown from seed when sold directly to the farmer and nurseryman;

(e) Fertilizer and containers used for farm products and field and garden seeds when sold directly to the farmer and nurseryman;

(f) Insecticide and pesticide chemicals when sold directly to and used by the farmer and nurseryman;

(g) Fungicide chemicals when sold directly and used by the farmer and nurseryman;

(h) Herbicide chemicals when sold directly to the farmer and nurseryman used to destroy or prevent the growth of weeds and bushes;

(i) Livestock and poultry feeds;

(j) Shoppers' advertisers using newsprint distributed in Tennessee or within a twenty-five (25) mile radius thereof at regular intervals and provided without charge to the shopper;

(k) Caskets and burial vaults used in the burial of the dead, up to or not to exceed five hundred dollars (\$500);

(l) School books and school lunches;

(m) All sales made to the state of Tennessee or any county or municipality within the state; and

(n) Hearing aids, as this term is defined in § 63-1502(3).

(2) There shall also be exempt from the provisions of this chapter all sales of tangible personal property to telephone cooperatives organized under the general welfare laws of this state. The exemption provided for herein shall apply only to sales of tangible personal property to telephone cooperatives for their own use and consumption, and shall not apply to any purchases made by the said telephone cooperatives for use by independent contractors. This paragraph shall apply only so long as electric membership corporations organized under the electric membership corporation law and electric cooperatives organized under the electric cooperative law, shall be entitled to an exemption from the payment of any sales and use tax.

(3) There shall further be exempted all sales of tangible personal property to commercial marine vessels for use by such vessels where the deliveries of such property are made in mid-stream of waterways constituting geographical boundaries of this state. Dealers shall, however, be required to support such sales by bills of sale

positively reflecting such delivery receipted by the master of the deliverer vessel.

(4) There shall also be exempt from sales tax any replacement parts or goods transferred without cost to a purchaser for the replacement of faulty parts or equipment which prior thereto had been sold under a warranty or guarantee or condition and upon which original purchase or importation a sales or use tax was paid.

(5) There shall also be exempt from sales or use tax the transfer, by any dealer in personal property, of any item from inventory to be used for demonstration purposes; provided that such article of personal property shall be returned to inventory for sale in the usual course of trade within one hundred twenty (120) days; if such article of personal property is used for demonstration purposes for a period in excess of one hundred twenty (120) days the dealer shall pay a use tax thereon for the amount that the cost of the article to the dealer exceeds the sales price of the article upon which sales tax is regularly assessed and paid when it is subsequently sold to a consumer.

(6) There shall also be exempt from sales and use tax the sale, at retail, for out-of-state use, of motor vehicles which are not to be registered, titled and used in this state. Use of a vehicle so sold, for transportation by the purchaser or his agent from point of purchase within this state to a point outside of this state, by direct route, not more than three (3) calendar days following the date noted upon the bill of sale, shall not constitute such usage as to remove tax exemption from such sale.

(7) There shall also be exempt from sales or use tax, the sale, use, storage or consumption of parts, accessories, materials and supplies sold to or used by commercial interstate or international air carriers for use exclusively in servicing and maintaining such carriers' aircraft, which aircraft are used principally in interstate or international commerce. This exemption shall not apply to fuel and other petroleum products or to shop equipment and tools.

(8) [Effective January 1, 1980] There shall also be exempt from sales tax the transfer, by any dealer in personal property, of railroad rolling stock or of vessels or barges of fifty (50) tons or over of displacement where the purchaser gives the seller an affidavit that such vessels or rolling stock are being purchased for use in interstate commerce or outside the state of Tennessee; and any such vessel or rolling stock shall also be exempt from use tax so long as it is being used in interstate commerce.

(9) There shall be exempt from the tax imposed by this chapter any prescription drug or medicine issued by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state of Tennessee.

There shall also be exempt from the tax imposed by this chapter any prescribed drug or medicine sold to a practitioner of the healing arts licensed by the state of Tennessee or issued by a licensed pharmacist for use in the treatment of a human being.

(10) An optometrist, optician or ophthalmologist shall be considered the user and consumer of the tangible

personal property used in the practice of his profession, and the tax levied under this chapter shall not be applicable to all or any part of the charge made by such persons to their patients. All sales of tangible personal property and taxable services to an optometrist, optician or ophthalmologist shall be subject to the sales or use tax.

(11) There shall also be exempt from sales and use tax the transfer between spouses of an automobile when such transfer is the result of a decree of divorce terminating that marriage.

(12) There shall also be exempt from the tax imposed by this chapter any sales of oxygen prescribed or recommended for the medical treatment of a human being by a licensed practitioner of the healing arts, and equipment necessary to administer such oxygen.

(13) There shall also be exempted any sale of a motor vehicle to a nonresident member of a uniformed service, as defined in the Internal Revenue Code of 1954, stationed under orders of their branch of service on a military reservation located partially within the boundary of Tennessee and that of another state. Dealers shall support each such sale by attachment to their file copy of the invoice evidencing it a copy of the official orders relating to stationing of the purchaser and proof of non-residency. This exemption shall terminate upon publication in the Tennessee administrative register of a certification made by the commissioner of revenue to the secretary of state that a substantially identical exemption is no longer accorded by the other state whose boundary encompasses the other portion of a military reservation located only partially within the boundary of this state.

(14) There shall also be exempt from the sales and use tax samples produced by a pharmaceutical plant within the state for future distribution outside of the state or temporarily stored by such pharmaceutical plant within the state for future distribution outside of the state.

(15) Sales to or used by a contractor, subcontractor or material vendor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery or installation of such tangible personal property, if that property is sold or used solely in the performance of a preexisting lump sum or unit price construction contract shall be exempt from the payment of the state rate of tax as provided in this chapter, at a rate in excess of that as provided by law March 31, 1976. For the purpose of this paragraph the term "preexisting lump sum or unit price construction contract" shall mean a written contract for the construction of improvements to real property under which the amount payable to the contractor, subcontractor or material vendor is fixed without regard to the costs incurred by him in the performance thereof, and which was entered into prior to April 1, 1976. Upon the application of any person, including a contractor, subcontractor, or material vendor, claiming the exemption in this paragraph, the commissioner is authorized to issue exemption certificates to such persons which, in his judgment, are entitled thereto. The commissioner of revenue is authorized to make final determination after hearing, if demanded, as to whether any person is entitled to the benefit of the exemption established by this paragraph. In the event any contractor, subcontractor or material vendor, pursuant to a preexisting lump sum or unit price construction contract, has paid the state sales

tax at a rate in excess of the rate provided by law in effect on March 31, 1976, upon the application of any person claiming the benefit of the exemption established by this paragraph, the commissioner of revenue shall issue to such taxpayer, in his capacity as a dealer, an official credit memorandum equal to the net amount paid by such taxpayer in excess of such rate. Such memorandum shall be accepted by the commissioner at full face value from the dealer to whom it is issued, in the remittance for subsequent taxes accrued under the provisions of this chapter, provided that in cases where a dealer has retired or has otherwise withdrawn from business and has filed a final return, or in cases where the dealer has anticipated tax liability which is insufficient, in the determination of the commissioner, to extinguish the credit within two years, a refund of tax shall be made to such dealer to the extent of the unused portion of such credit memorandum. Provided, however, all such refunds shall be made under the procedures and limitations set out in § 67-2301. The commissioner may, in his discretion, limit the credit allowable under this subdivision so that the credit will be allowed equally in the fiscal year in which claimed and the two succeeding fiscal years. Claims for credit under this subdivision shall be barred if not filed before September 30, 1978, or such later date which is within the limitations set forth in § 67-2301.

(16) There shall also be exempt from the tax imposed by this chapter the sale of human blood, blood plasma, or any part thereof by any institution or organization which has received a determination of exemption from the Internal Revenue Service under § 501(c)(3) of the Internal Revenue Code.

(17) There shall further be exempt from the sales and use tax the proceeds derived from sales at gun shows, displays or exhibits, sponsored by any nonprofit organization of gun collectors. This exemption shall not be applicable to any sale made by a person who regularly engages in business as a dealer in guns, or to any sale of a gun for future delivery.

(18) There shall also be exempt from sales and use tax the sale, at retail, of insulin and any syringe used to dispense insulin.

(19) There shall also be exempt from the sales tax imposed by this chapter the transfer of an artificial limb to a person who has need for such artificial limb due to his loss of an arm or leg or any part thereof and the retail sale of lift devices designed to permit ingress and egress of handicapped persons confined to wheelchairs from their personal motor vehicles. There shall also be exempt from the sales tax imposed by this chapter the sale of any item necessary for the use or wearing of any artificial limb and the sale of any necessary maintenance service on any artificial limb, lift device, or wheelchair to handicapped persons who use such items.

(20) There shall also be exempt from the tax imposed by this chapter the sale, transfer, or lease of industrial machinery, as that term is defined in Tennessee Code Annotated, Section 67-3002, to or from a parent corporation and a wholly owned subsidiary to the extent that such Tennessee sales and use tax applicable to such machinery has previously been paid by such parent or subsidiary corporations.

(21) There shall also be exempt from sales or use tax all sales of tangible personal property to watershed districts for use and consumption by such districts. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2, 1980, ch. 613, § 1; 1980, ch. 748, § 1; 1980, ch. 863, § 1.]

67-3013. *Exemption of film and transcription rentals.*—There shall also be exempted all rental from films to theaters which pay the privilege tax of two percent (2%) of their gross receipts, as provided by Item R of § 67-4102. There shall also be exempt from the provisions of this chapter all rental for films, transcriptions and recordings to radio stations and television stations operating under a certificate from the federal communications commission. [Acts 1951, ch. 172, § 1; 1953, ch. 128, § 1 (Williams, § 1328.27).]

67-3014. *Exemption of religious, educational, charitable and certain nonprofit organizations.*—(a) There shall be exempt from the provisions of this chapter any sales or use tax upon tangible personal property or taxable services sold, given, or donated to any:

- (1) Church;
- (2) University, including the Agricultural Foundation for Tennessee Tech, Inc.;
- (3) College;
- (4) School ;
- (5) Orphanage;
- (6) Institution organized for the principal purpose of placing homeless children in foster homes;
- (7) Home for the aged;
- (8) Hospital;
- (9) Girls' club;
- (10) Boys' club;
- (11) Community health council;
- (12) Volunteer fire department;
- (13) Organ bank for transplantable tissue;
- (14) Organization whose primary objective is to promote the spiritual and recreational environment of members of the armed services of the United States of America, such as the United Service Organization as it is presently conducted;
- (15) Historical property owned by the state and operated by the historical commission or under the jurisdiction of the commission as authorized by § 4-1108;
- (16) Nonprofit community blood banks;
- (17) Senior citizen service centers which meet the standards set by the Tennessee commisison on aging for eligibility to receive state funds;

(18) Nonprofit corporation whose primary function involves the annual organization, promotion, and sponsorship of a statewide talent and beauty pageant in which contestants compete for scholarships, awarded by such nonprofit corporation, as well as for the opportunity of being Tennessee's representative and contestant in an annual nationwide talent and beauty pageant with which such nonprofit corporation is affiliated.

(b) In addition to the exempt institutions, organizations and historical properties described in subsection (a) there shall also be exempt such other institutions and organizations which have received a determination of exemption from the Internal Revenue Service under § 501(c)(3) (42 U.S.C. § 501(c)(3) of the Internal Revenue Code and are currently operating under it.

(c) Any exemption granted under subsection (a) or (b) shall be limited to such institutions, organizations or historical properties which are not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) Any exemption granted under the preceding subsections shall only apply to sales, gifts, or donations made directly to the exempt institution, organization or historical property. There shall be no exemption upon sales, gifts, or donations made to an independent contractor with any such exempt institution, organization or historical property.

(e) No dealer shall sell, give, or donate and no user shall use any tangible personal property under the claim that the same is exempt from the sales or use tax levied by this chapter, where the exemption from taxation is claimed because the vendee or user is an educational, re-

ligious or charitable institution or organization or historical property and is entitled to an exemption as such institution or organization or historical property under subsections (a)-(d), unless the vendor or user shall have issued to it by the commissioner an exemption certificate declaring that such institution or organization or historical property is entitled to the exemption provided for by said paragraphs.

(f) The commissioner is authorized to make final determination after hearing, if demanded, as to whether any institution or organization or historical property is entitled to the benefit of the exemption established by said four (4) paragraphs. The commissioner is authorized to issue exemption certificates to institutions and organizations and historical properties which, in his judgment, are entitled thereto. [Acts 1949, ch. 110, § 1; 1949, ch. 237, § 1; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1967, ch. 364, § 1; 1967, ch. 369, § 1; 1968 (Adj. S.), ch. 531, § 1; 1973, ch. 263, § 1; 1975, ch. 125, § 1; 1975, ch. 270, § 1, 2; 1975, ch. 290, § 1; 1976 (Adj. S.), ch. 619, § 1; 1976 (Adj. S.), ch. 684, § 1; 1976 (Adj. S.), ch. 791, § 1; 1977, ch. 97, §§ 1, 2; 1977, ch. 125, 1; 1979, ch. 63, §§ 1-4; 1979, ch. 168, § 1.]

67-3015. *Computation on trade-ins.*—Where used articles are taken in trade, or in a series of trades, as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference, that is, the price of the new or used article sold less the credit for the used article taken in trade. [Acts 1947, ch. 3, subsec. 6; mod. C. Supp. 1950, § 1248.62 (Williams, § 1328.28).]

67-3016. *Collection from dealers.*—The aforesaid tax at the rate provided by law of the retail sales price, as of

the moment of sale, or of the cost price, as of the moment of purchase, as the case may be, shall be collectible from all persons, as defined in § 67-3002, engaged as dealers, as defined in § 67-3017, in the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of tangible personal property, or in the furnishings of any of the things or services taxable under this chapter. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.53 (Williams, § 1328.25); Acts 1955, ch. 51, §§ 7, 9; 1971, ch. 117, § 3.]

67-3017. *“Dealer” defined.*—The term “dealer” is further defined to mean every person, as used in this chapter, who manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in this state.

The term “dealer” is further defined to mean every person, as used in this chapter, who imports or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in this state.

The term “dealer” is further defined to mean every person, as used in this chapter, who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, or consumption, or distribution, or storage to be used or consumed in this state, tangible personal property as defined herein.

The term “dealer” is further defined to mean any person who has sold at retail, or used, or consumed, or distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at re-

tail, the use, the consumption, the distribution, or the storage of said tangible personal property.

The term "dealer" is further defined to mean any person who has sold at retail, or used, or consumed, or distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of said tangible personal property.

The term "dealer" is further defined to mean any person, as used in this chapter, who leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of said property without transferring title thereto.

The term "dealer" is further defined to mean any person, as used in this chapter, who is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto.

The term "dealer" is further defined to mean any person as used in this chapter, who maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room, or house, warehouse, or other place of business.

The term "dealer" is further defined to mean any person as defined in this chapter, who furnishes any of the things or services taxable under this chapter.

The term "dealer" is further defined to mean any person, as used in this chapter, who has any representa-

tive agent, salesman, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, irrespective of whether such representative, agent, salesman, canvasser or solicitor is located here permanently or temporarily, and irrespective of whether an established place of business is maintained in this state.

The term "dealer" is further defined to mean and include any person, as used in this chapter, who distributes catalogues or other advertising matter and by reason thereof receives and accepts orders from residents of this state.

The term "dealer" is further defined to mean any person who uses tangible personal property, whether the title to such property is in him or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of his contract or to fulfill his contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid. [Acts 1947, ch. 2, § 4; C. Supp. 1950, § 1248.53 (Williams, § 1328.25); Acts 1955, ch. 51, § 10; 1955, ch. 242, §§ 1, 8.]

67-3018. *Payment by dealer.*—Every "dealer" making sales, whether within or outside the state, of tangible personal property, for distribution, storage, use, or other consumption in this state, or furnishing any of the things or services taxable under this chapter, shall be liable for the tax imposed by this chapter. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.54 (Williams, § 1328.25); Acts 1955, ch. 51, § 11; 1957, ch. 307, § 1; 1969, ch. 3, § 1.]

67-3019. [*Repealed.*]

Note. This section (Acts (Williams, § 1328.26)) was repealed by 1947, ch. 3, § 5; C. Supp. 1950, § 1248.60 Acts 1996, ch. 3, § 2.

67-3020. *Collection and payment by retailers.*—(a) The commissioner may by regulation provide that the amount collected by the retailer from the consumer in reimbursement of the tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sale check or other proof of sale.

(b) When the tax collected for any period is in excess of that provided by law, the total tax collected shall be paid over to the commissioner, less any compensation allowed to the dealer as hereinafter set forth. This provision shall be construed with other provisions of this chapter and given effect so as to result in the payment to the commissioner of the total tax collected if in excess of that provided by law.

(c) Every dealer licensed to do business in the state of Tennessee who shall become delinquent for more than ninety (90) days in the payment of any sales or use taxes due the state after March 8, 1963, shall, upon notice from the commissioner, post with the commissioner cash or an indemnity bond with good and solvent surety, approved by him, in an amount equal to three (3) times the average monthly sales tax liability or use tax liability of said dealer, conditioned upon the proper payment of retail sales taxes or use taxes for which such dealer may become liable; provided, further, that in the event that any dealer who may become subject to the provisions of this sub-

section shall fail to post said cash or surety bond, said dealer shall be subject to revocation of any one (1) or more of the certificates of registration held by him as provided by § 67-3041. The bond provided for herein shall run for such time as may be determined by the commissioner.

(d) The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done. [Acts 1947, ch. 3, § 5; C. Supp. 1950, § 1248.60 (Williams, § 1328.26); Acts 1955, ch. 51, § 7; ch. 307, § 2; 1963, ch. 89, § 1; 1969, ch. 3, § 3; 1970, (Adj. S.), ch. 402, § 1; 1971, ch. 117, § 4.]

67-3021. *Deduction for accounting expense.*—For the purpose of compensating the dealer in accounting for and remitting the tax levied on and after July 1, 1980, by this chapter, a dealer shall be allowed a deduction of tax due, reported, and paid to the department as follows:

(1) 2 percent (2%) of the first \$2,000 on each report, and

(2) 1½% of amounts over \$2,000 on each report.

Beginning July 1, 1985, and thereafter, for the purpose of compensating the dealer in accounting for and remitting the tax levied by this chapter, a dealer shall be allowed a deduction of tax due, reported, and paid to the department of 2 percent (2%) on each report.

No deduction from tax shall be allowed if any such report or payment of tax is delinquent.

Provided, however, when delinquency of the amount due is caused by the destruction by fire or other casualty of the dealer's place of business or business records, such

dealer shall be allowed the two percent (2%) deduction from the amount of tax due as authorized in this section. [Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.65 (Williams, § 1328.30); 1980, ch. 594, §§ 1, 2, 3; 1980, ch. 871, § 3.]

NOTE: Destruction by fire provision retroactive to 1/1 '78 and repealed effective 4/18/80.

67-3022. *Monthly returns and payment.*—The taxes levied hereunder shall be due and payable monthly, on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this chapter it shall be the duty of all dealers on or before the 20th day of each month to transmit to the commissioner, upon forms prescribed, prepared and furnished by him, returns, showing the gross sales, or purchases, as the case may be, arising from all sales or purchases taxable under this chapter during the preceding calendar month. [Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.64 (Williams, § 1328.30; modified).]

67-3023. *Payment of tax with return.*—At the time of transmitting the return required hereunder to the commissioner the dealer shall remit to him therewith the amount of tax due under the applicable provisions of this chapter and failure to so remit such tax shall cause said tax to become delinquent. [Acts 1947, ch. 3, § 10; C. Supp. 1950, § 1248.75 (Williams, § 1328.32).]

67-3024. *Payment of tax on rentals or furnishing of things or services.*—Gross proceeds from rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the commissioner may prescribe.

It is declared to be the intention of this chapter to impose a tax on the gross proceeds of all leases and rentals of tangible personal property in the state where the lease or rental is a part of the regularly established business, or the same is incidental or germane thereto.

Gross proceeds from the furnishing of things or services taxable under this chapter shall be reported and the tax shall be paid with respect thereto in the same manner as gross proceeds from the sale, rental or lease of tangible personal property and in accordance with such rules and regulations as the commissioner may prescribe. [Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.64 (Williams, § 1328.30); Acts 1955, ch. 51, § 12.]

67-3025. *Settlement of tax on quitting business—Collection of tax from debtor or dealer.*—(a) If any dealer liable for any tax, interest or penalty levied hereunder shall sell out his business or stock of goods, or shall quit the business, he shall make a final return and payment within fifteen (15) days after the date of selling or quitting the business. His successor, successors, or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, interest, and penalties due and unpaid until such former owner shall produce a receipt from the commissioner showing that they have been paid, or a certificate stating that no taxes, interest, or penalties are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided, he shall be personally liable for the payment of the taxes, interest, and penalties accruing and unpaid on account of the operation of the business by any former owner, owners, or assigns.

(b) In the event any dealer is delinquent in the payment of the tax herein provided for the commissioner may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such dealer, or owing any debts to such dealer at the time of receipt by them of such notice, and thereafter any person so notified shall neither transfer nor make any other dispositions of such credits, other personal property, or debts, until the commissioner shall have consented to a transfer or disposition, or until thirty (30) days shall have elapsed from and after the receipt of such notice. All persons so notified must, within five (5) days after receipt of such notice, advise the commissioner of any and all such credits, other personal property, or debts, in their possession, under their control, or owing by them, as the case may be.

(c) Any violation of the provisions of this section shall be a misdemeanor and punishable as such. [Acts 1947, ch. 3, § 7; C. Supp. 1950, § 1248.63 (Williams, § 1328.29).]

67-3026. *Interest and penalties for delinquency—Extension of time for making return—Establishment of filing dates.*—When any dealer shall fail to make any return and pay the full amount of the tax required by this chapter there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of five percent (5%), if the failure is for not more than thirty (30) days with an additional five percent (5%), for each additional thirty (30) days, or fraction thereof, during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate. In

the case of a false or fraudulent return, where willful intent exists to defraud the state of any tax due under this chapter, a specific penalty of fifty percent (50%) of the tax shall be assessed. Provided, however, where a return is delinquent at the time it is filed or becomes delinquent, the minimum penalty may be five dollars (\$5.00), regardless of the amount of tax due or whether there is any tax due.

When an examination of a dealer's books and records indicates that the dealer is deficient in paying the proper tax due for a month, but has paid more tax than is actually due for another month, or is deficient in paying the proper tax on one or more transactions within a month, but has paid more tax than is actually due on other transactions during the same month, or has erroneously paid tax to another dealer, the overpayment or erroneous payment shall be applied to the deficiency before computing any penalty and interest due as a result of such examination, the earliest overpayments offsetting the earliest underpayments for this purpose, and the penalty, if any, being computed on the amounts of underpayments not offset by overpayments.

All penalties and interest imposed by this chapter shall be payable to and collectible by the commissioner in the same manner as if they were a part of the tax imposed.

The commissioner is specifically authorized to establish by regulation periodic filing and payment dates other than monthly in those instances where the commissioner deems it to be in the best interests of the state to do so; provided, however, that in such cases where the average monthly liability is or is indicated to be more than one hundred dollars (\$100), the commissioner shall require

advance deposits in such amounts as the commissioner deems necessary to protect the state's interest.

The commissioner for good cause may extend for not to exceed thirty (30) days the time for making any returns required under the provisions of this chapter. [Acts 1947, ch. 3, § 8; 1949, ch. 245, § 3; C. Supp. 1950, § 1248.66 (Williams, § 1328.30); Acts 1965, ch. 4, § 1; 1969, ch. 164, §§ 1, 2; 1970 (Adj. S.), ch. 360, § 1; 1977, ch. 64, § 1, 1980, ch. 885, § 13.]

NOTE: Effective July 1, 1980, interest rate is provided for in section 67-112, TCA.

67-3027. *Form of payment.*—All taxes, interest, and penalties imposed under this chapter shall be paid to the commissioner at Nashville in the form of remittance required by him. [Acts 1947, ch. 3, § 10; C. Supp. 1950, § 1248.76 (Williams, § 1328.32).]

67-3028. *Credit for sales returns and allowances.*—In the event purchases are returned to the dealer by the purchaser or consumer after the tax imposed by this chapter has been collected, or charged to the account of the consumer or user, the dealer shall be entitled to reimbursement of the amount of tax so collected or charged by him, in the manner prescribed by the commissioner; and in case the tax has not been remitted by the dealer to the commissioner, the dealer may deduct the same in submitting his return upon receipt of a signed statement of the dealer as to the gross amount of such refunds during the period covered by said signed statement, which period shall not be longer than ninety (90) days. In the event a dealer shall sell any article of personal property on a security agreement or other title retained instrument and such

dealer shall thereafter be required to repossess or enforce his lien on said article of personal property at a time when the balance due on the unpaid purchase price shall exceed five hundred dollars (\$500), such dealer shall be entitled to a credit on the sales tax which he shall be required to collect and remit to the commissioner in an amount equal to the difference between the amount of the sales tax collected and paid at the time of the original purchase and the amount of sales tax which would be owed on that portion of the purchase price which has actually been paid by the purchaser, plus the sales tax on the first five hundred dollars (\$500) of the unpaid balance of the purchase price. The commissioner shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected. Such memorandum shall be accepted by the commissioner at full face value from the dealer to whom it is issued, in the remittance for subsequent taxes accrued under the provisions of this chapter, provided that in cases where a dealer has retired from business and has filed a final return, a refund of tax may be made if it can be established to the satisfaction of the commissioner that the tax was not due.

A dealer who has paid the tax imposed by this chapter on any sale as defined in § 67-3002 may take credit in any return filed under the provisions of this chapter for the tax paid by him on the unpaid balance due on accounts which during the period covered by the current return have been found to be worthless and are actually charged off for federal income tax purposes, provided, that if any accounts so charged off are thereafter in whole or in part paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax

paid accordingly. [Acts 1947, ch. 3, § 13; C. Supp. 1950, § 1248.82 (Williams, § 1328.35); Acts 1965, ch. 358, § 1; 1974 (Adj. S.), ch. 798, § 1.]

67-3029. *Estimate by commissioner of tax due.*—In the event any dealer fails to make a report and pay the tax as provided by this chapter, or in case any dealer make a grossly incorrect report, or a report that is false or fraudulent it shall be the duty of the commissioner to make an estimate for the taxable period of retail sales of such dealer, or of the gross proceeds for rentals or leases of tangible personal property by the dealer, estimating the cost price of all articles of tangible personal property imported by the dealer for use or consumption or distribution or storage to be used or consumed in this state, and assess and collect the tax and interest, plus penalty, if such have accrued, on the basis of such assessment, which shall be considered prima facie correct, and the burden to show the contrary shall rest upon the dealer. However, if the dealer can show by reasonable proof that he has paid any Tennessee Sales or Use Tax to a vendor on personal property or taxable service which such dealer has subsequently sold without collecting tax on the resale of said personal property or taxable service, then the dealer shall be given credit for any such payment in computing any liability to the Department of Revenue for Sales or Use Tax. Reasonable proof can be supplied by invoices and other records which the dealer may obtain from the vendors from which he has made purchases. [Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.67 (Williams, § 1328.30); Acts 1965, ch. 285, § 1.]

67-3030. *Examination of books and assessment in absence of dealer's return.*—(a) If any dealer subject to

make and file a return required by any provision of this chapter fails to render such return within the time required or renders a return which is false or fraudulent in that it contains statements which differ from the true gross sales, purchases, leases, or rentals taxable under this chapter or otherwise fails to comply with the provisions of this chapter for the taxable period for which said return is made, the commissioner shall give such dealer ten (10) days' notice in writing requiring such dealer to appear before him or his assistant with such books, records, and papers as he may require relating to the business of such dealer for such taxable period; and said commissioner may require such dealer or the agents and employees of such dealer to give testimony or to answer interrogatories under oath administered by the commissioner or his assistants respecting the sale at retail, the use, consumption, or distribution, or storage for use or consumption in this state or lease or rental of tangible personal property subject to tax or the failure to make report thereof as provided in this chapter.

(b) If any dealer fails to make any such return or refuses to permit an examination of his, the dealer's books, records or papers, or to appeal and answer questions within the scope of such investigation relating to the sale, use, consumption, distribution, storage, lease, or rental of tangible personal property, the commissioner is authorized to make an assessment based upon such information as may be available to him and to issue a distress warrant for the collection of any such taxes, interest or penalties found to be due. Any such assessment shall be deemed prima facie correct. [Acts 1947, ch. 3, § 10; C. Supp. 1950, § 1248.74 (Williams, § 1328.32.)]

67-3031. *Assessment of use tax by commissioner.*—In the event the dealer has imported the tangible personal property and he fails to produce an invoice showing the cost price of the articles as defined in this chapter, which are subject to tax, or the invoice does not reflect the true or actual cost price as defined herein, then the commissioner shall ascertain, in any manner feasible, the true cost price, and assess and collect the tax with interest plus penalties, if such have accrued on the true cost price as assessed by him; the assessment so made shall be considered prima facie correct, and the duty shall be on the dealer to show the contrary. ([Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.69 (Williams, § 1328.30.)])

67-3032. *Value of rental fixed by commissioner.*—In the case of the lease or rental of tangible personal property, if the consideration given or reported by the dealer does not, in the judgment of the commissioner, represent the true or actual consideration, then the commissioner is authorized to fix the same and collect the tax thereon in the same manner as above provided, with interest plus penalties, if such have accrued. [Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.70 (Williams, § 1328.30.)]

67.3033. *Delinquency—Distress warrants—Collection of erroneous payments—Injunction—Lien—Recording.*—The tax imposed by this chapter shall for each month become delinquent on the twenty-first (21st), day of each succeeding month.

The commissioner of revenue is empowered and it shall be his duty when any tax becomes delinquent under this chapter to issue a distress warrant for the collection of the tax, interest, and penalty from each delinquent tax-

payer. Said distress warrant may be addressed and delivered to the sheriff of the county wherein such delinquent taxpayer resides, or has his principal office or place of business, or to the sheriff of any county in which the commissioner has reason to believe property of such delinquent taxpayer may be found.

The sheriff into whose hands such warrant may come, or his deputy, may execute same by the distraint and sale of personal property belonging to such taxpayer and the proceedings in respect thereto shall be the same as are provided by law for proceedings under an execution at law from a court of record; and the executing officer shall be entitled to the same fees, commissions, and necessary expense of removing and keeping property distrained as in case of an execution from a court of record.

If the officer cannot find any personal property to satisfy said distress warrant, he may levy same upon any real estate in his county belonging to such delinquent taxpayer; and if levied on land, said distress warrant together with the officer's return thereon shall be returned to the circuit court of the county wherein the land lies and the land shall be condemned and sold under the orders of said circuit court in the same manner as in case of the levy on land of an execution issued by a justice of the peace.

Upon any claim of illegal assessment and collection the taxpayer shall have his remedy under §§ 67-2303-67-2312, and also shall be allowed to file claims for refund in the manner authorized by the general law.

Distress warrants issued for the collection of the tax imposed by this chapter may, in the discretion of the com-

missioner of revenue, be addressed and delivered to an employee or representative of the department of revenue for purposes of execution, and such employee or representative shall have the same powers and authority as a sheriff for the purposes of levying and executing any distress warrants so issued. Such employee or representative shall be entitled to the same fees and costs as would accrue to a sheriff for such services, which fees and costs shall be paid to the department of revenue and deposited in the general fund of the state treasury.

The commissioner may, in his discretion, require any dealer who has been found in default under this chapter, to execute and file with the department a good-faith bond, with surety approved by the commissioner, in an amount double the defaulted liability, which bond shall be kept on file with the department and remain in effect such period of time after such default as may be required by the commissioner.

The commissioner, with the approval of the attorney-general, may file and maintain injunctive proceedings against any dealer who is delinquent or in default under this chapter to enjoin such dealer from doing business during such delinquency or default.

The tax herein levied shall be a lien upon all the property of the dealer against whom the same is assessed located in this state and shall be inferior only to state and county ad valorem taxes and to existing liens created by contracts, but it shall be superior to any renewals of existing contract liens; provided, however, that it shall be the responsibility of the department of revenue to file and have recorded a notice of such lien in the office of the

county register of deeds in the county or counties where such property is located, and it shall be the duty of the county register to record notice of such lien in the same manner as other liens are filed in his office; such tax lien shall not be superior to any recorded lien except those subsequently placed of record. There shall be no fees collected by the county register at the time the notice of such a lien is recorded but he shall extend credit to the department of revenue for such recording fees as are chargeable and submit his bill at the end of each month to the director of the division submitting such notice of lien for recordation in order to obtain payment. [Acts 1947, ch. 3, § 11; C. Supp. 1950, § 1248.78 (Williams, § 1328.33); Acts 1955, ch. 242, § 5; impl. am. Acts 1959, ch. 9, § 14; Acts 1971, ch. 285, § 2.]

67-3034. *Records kept by dealers.*—It shall be the duty of every dealer required to make a report and pay any tax under this chapter, to keep and preserve suitable records of the sales or purchases, as the case may be, taxable under this chapter, and such other books of account as may be necessary to determine the amount of tax due hereunder, and other information as may be required by the commissioner, and it shall be the duty of every such dealer, moreover, to keep and preserve, for a period of three (3) years, all invoices and other records of goods, wares and merchandise, or other subjects of taxation under this chapter; and all such books, invoices, and other records shall be open to examinations at all reasonable hours to the commissioner or any of his authorized agents. [Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.68 (Williams, § 1328.30); Acts 1955, ch. 242, § 2.]

67-3035. *Contents of dealer's records—Penalty for violations.*—Each dealer, as defined in this chapter, shall

secure, maintain, and keep for a period of three (3) years a complete record of tangible personal property received, used, sold at retail, distributed or stored, leased or rented within this state by said dealer together with invoices, bills of lading, and other pertinent records and papers as may be required by the commissioner for the reasonable administration of this chapter, and all such records shall be open for inspection to the commissioner at all reasonable hours. Any dealer subject to the provisions of this chapter who shall violate these provisions shall be guilty of a misdemeanor and upon conviction shall be punished as provided by the general law. [Acts 1947, ch. 3, § 9; C. Supp. 1950, § 1248.73 (Williams, § 1328.31); Acts 1955, ch. 242, § 4.]

67-3036. *Records kept by wholesalers and jobbers.*— In order to aid in the administration and enforcement of the provisions of this chapter, and collect all of the tax imposed by this chapter, all wholesale dealers and jobbers in this state are required to keep a record of all sales of tangible personal property made in this state, whether such sales be for cash or on terms of credit. The record required to be kept by all wholesale dealers and jobbers shall contain and include the name and address of the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. These records shall be kept for a period of three (3) years and shall be open to the inspection of the commissioner, or his duly authorized assistants, at all reasonable hours. The failure of any wholesale dealer or jobber in this state to keep such records, or the failure of any wholesale dealer or jobber in this state to permit an inspection of such records by the commissioner as aforesaid, shall be deemed a misdemeanor and upon conviction thereof the wholesale

dealer or jobber shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200), or imprisonment in the county jail for not less than ten (10) days nor more than thirty (30) days, or both, for the first offense, and for the second or each subsequent offense the penalty shall be double. [Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.71 (Williams, § 1328.30); Acts 1955, ch. 242, § 3.]

67-3037. *Access to records of carriers.*—For the purpose of enforcing the collection of the tax levied by this chapter the commissioner is specifically authorized and empowered to examine at all reasonable hours the books, records, and other documents of all transportation companies, agencies or firms that conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers, as provided in this chapter, are importing or otherwise shipping articles of tangible personal property which are liable for said tax. In the event said transportation company, agency or firm shall refuse to permit such examination of its books, records, and other documents by the commissioner, as aforesaid, it shall be deemed guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500); provided further, that the commissioner shall have the right to proceed in the chancery court for a mandatory injunction or other appropriate remedy to enforce his right, as granted by this section, to an examination of the books and records of transportation companies. [Acts 1947, ch. 3, § 9; C. Supp. 1950, § 1248.72 (Williams, § 1328.31).]

67-3038. *Importation permits.*—In order to prevent the illegal importation of tangible personal property which

is subject to tax in this state, and to strengthen and make more effective the manner and method of enforcing payment of the tax imposed by this chapter, the commissioner is authorized and empowered to put into operation a system of permits whereby any person or dealer as defined in this chapter may import tangible personal property by truck, automobile, or other means of transportation other than a common carrier, without having said truck, automobile, or other means of transportation seized and subjected to legal proceedings for its forfeiture. Such system of permits shall require the person or dealer who desires to import tangible personal property into this state which property is subject to tax imposed by this chapter, to apply to the commissioner or his assistant for a permit stating the kind of vehicle to be used, the name of the driver, the license number of the vehicle, the kind or character of tangible personal property to be imported, the date, the name and address of the consignee and such other information as the commissioner may deem proper or necessary to prevent the illegal transportation of tangible personal property into this state. Such permit shall be free of cost to the applicant and may be obtained from the department of finance and taxation or any of its branch offices. [Acts 1947, ch. 3, § 12; C. Supp. 1950, § 1248.79 (Williams, § 1328.34).]

67-3039. *Importation without permit prohibited.*—The importation into this state of tangible personal property which is subject to tax, by truck, automobile or other means of transportation other than a common carrier, without having first obtained a permit as described hereinbefore (if the tax imposed by this chapter on the said tangible personal property has not been paid), shall be

construed as an attempt to evade payment of the said tax and the same is prohibited and the said truck, automobile or means of transportation other than a common carrier, and said taxable property may be seized by the commissioner in order to secure the same as evidence in a trial and the same shall be subject to forfeiture and sale in the manner provided for in this chapter. [Acts 1947, ch. 3, § 12; C. Supp. 1950, § 1248.80 (Williams, § 1328.34).]

67-3040. *Confiscation of vehicle used in illegal importation.*—Any truck, automobile, or other means of transportation other than a common carrier which is used to import into this state tangible personal property which is subject to tax under this chapter, together with the contents thereof, is declared to be contraband and subject to confiscation unless a permit as hereinabove described was first obtained. The commissioner shall confiscate any such truck, automobile, or other means of transportation other than a common carrier together with its contents whenever the same is found to be importing without permit tangible personal property, the sale or use of which is taxable under this chapter.

Upon seizure for confiscation the commissioner or his representatives shall appraise the value of the vehicle and its contents according to his best judgment and shall deliver to the person, if any, found in possession of such property, a receipt showing the fact of seizure, from whom seized, the place of seizure, a description of the vehicle and contents seized. A copy of said receipt shall be filed in the office of the department of finance and taxation and shall be open to public inspection.

The commissioner or any representative of the department of finance and taxation shall within five (5) days ad-

vertise the said vehicle and its contents or other property so seized for sale to the highest bidder by one (1) proper notice in a newspaper published in the county where the property is to be sold, if the county has such newspaper; if no newspaper, then by notice on the courthouse door at least five (5) days prior to the date of sale, containing a description of the vehicle and property to be sold.

Any person claiming any property so seized as contraband goods may, at any time before the sale, file with the commissioner at Nashville a claim in writing requesting a hearing and stating his interest in the articles seized. The commissioner shall set a date for hearing within ten (10) days from the day the claim is filed. The commissioner is empowered to subpoena witnesses and compel their attendance at the hearing authorized under this chapter. All parties to the proceeding including the person claiming such property shall have the right to have subpoenas issued by the commissioner to compel the attendance of all witnesses deemed by such parties to be necessary for a full and complete hearing. All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileage shall be paid as a part of the cost of the proceeding.

In the event the ruling of the commissioner is favorable to the claimant the commissioner shall deliver to the claimant the vehicle or property so seized. If the ruling of the commissioner is adverse to the claimant the commissioner shall proceed to sell such contraband goods in accordance with the foregoing provisions of this chapter. The expense of storage, transportation, etc., shall be adjudged as a part of the cost of the proceeding in such manner as the commissioner shall fix pending and proceed-

ing to recover a vehicle or other property seized under this chapter. The commissioner may order delivery thereof to any claimant who shall establish his right to immediate possession thereof and who shall execute with one (1) or more sureties, approved by the commissioner, and deliver to the commissioner a bond in favor of the state of Tennessee for the payment of a sum double the appraised value thereof as of the time of the hearing; and containing the further provision that if the vehicle or other property is not returned at the time of the hearing the bond shall stand in lieu of and be forfeited in the same manner as such vehicle or other property.

The action of the commissioner may be reviewed by a petition for common law writ of certiorari addressed to the circuit court of Davidson county, which petition shall be filed within ten (10) days from the date the order of the commissioner is made.

Immediately upon the granting of the writ of certiorari the commissioner shall cause to be made, certified, and forwarded to said court a complete transcript of the proceeding in said cause which shall contain all the proofs submitted before the commissioner. All defendants named in the petition desiring to make defense shall answer or otherwise plead to said petition within ten (10) days from the date of the filing of said transcript unless the time be extended by the court.

Said decision of the commisioner shall be reviewed by the circuit court solely upon the pleadings, and a transcript of the evidence before the commissioner and neither party shall be entitled to introduce any additional evidence in the circuit court. The confiscated vehicle or goods shall

not be sold pending such review but shall be stored by the commissioner until the final disposition of said case.

Within the discretion of the commissioner the claimant may be awarded possession of the confiscated goods pending the decision of the circuit court under the petition for certiorari, provided the claimant shall be required to execute a bond payable to the state of Tennessee in an amount double the value of the property seized, the sureties to be approved by the commissioner. The condition of the bond shall be that the obligors shall pay to the state the full value of the vehicle or goods seized unless upon certiorari the decision of the commissioner shall be reversed and the property awarded to the claimant.

If no claim is interposed, such vehicle or other goods shall be forfeited without further proceedings and the same sold as hereinabove provided. The above procedure is the sole remedy of any claimant and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas, or in any other manner.

Any funds derived from the sale of confiscated vehicles or other goods shall be distributed or allocated in the same manner as other funds derived from this chapter. [Acts 1947, ch. 3 § 12; C. Supp. 1950, § 1248.81 (Williams, § 1328.34).]

67-3041. *Registration of sellers—Recall of certificate—Certiorari.*—Every person desiring to engage in or conduct business as a dealer in this state shall file with the commissioner an application for a “certificate of registration” for each place of business. Every application for a certificate of registration shall be made upon a form prescribed by the commissioner and shall set forth the name

under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

When the required application has been made the commissioner shall issue to each applicant a separate certificate of registration for each place of business within the state; provided, however, no certificate of registration shall be issued to any person who has been engaged in business in this state, and who has not made a complete return and payment as provided for in § 67-3025, or who is delinquent in the payment of any sales or use tax due the state. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

Provided, further, that the commissioner may refuse to issue any such registration certificate for any place of business where there is reasonable cause to believe there exists a continuity of business enterprise or resumption of a discontinued one involving a transfer of a business and/or a stock of goods in the same or a different location between members of a family, between relatives by blood or marriage, between employer and employee, or former employee, from a partnership or proprietorship to a corporation, or vice versa, where all or some of the per-

sons involved are the same, or that there otherwise exists a conspiracy to defeat the enforcement of this chapter, in the event the transferor is delinquent in the payment of the payment of the tax herein provided. Such refusal may be continued until such time as the transferor shall have complied with the requirements of § 67-3025 hereof and with all pertinent provisions of this chapter and rules and regulations of the commissioner promulgated hereunder or until full and complete explanatory information requested by the commissioner has been furnished. Any person aggrieved by such refusal or by the denial of a certificate for reasons stated in the preceding paragraph may, within ten (10) days after written notice thereof has been mailed or delivered to him, apply to the commissioner for a hearing setting forth in such application a full statement of the grounds on which he intends to rely; provided, that he has filed with the commissioner, at the time of making such application, a surety company bond running to the state in such sum as the commissioner may determine to be appropriate under the circumstances, conditioned upon the payment of all taxes then due and to become due during the pendency of such appeal to the commissioner and during any further judicial appeal. When such bond is filed the commissioner shall immediately issue such registration certificate. After such hearing the commissioner shall give written notice of his decision. In the event of an adverse determination by the commissioner under the provisions of this or the preceding paragraph an appeal therefrom may be made to any court having jurisdiction within ten (10) days after such written notice has been mailed or delivered to him.

When any person to whom a "certificate of registration" has been issued under this chapter leases certain departments in his place of business to other persons for the purpose of making sales at retail of tangible personal property or taxable services to consumers and keeps the records and makes and accounts for the collection of the leased department's sales, he may include the sales made by such leased departments in his own tax return and remit the tax due thereon. Provided, however, that in such instances a lessor shall be deemed to be an agent of the lessee and the lessee shall not be relieved of any of his liabilities under this chapter if the lessor defaults therein.

Whenever any person fails to comply with any provision of this chapter or any rule or regulation of the commissioner relating thereto, the commissioner, upon hearing, after giving the person ten (10) days' notice in writing, specifying the time and place of a hearing and requiring him to show cause why his certificate of registration should not be revoked, may revoke or suspend any one (1) or more of the certificates of registration held by the person. The notice may be served personally or by certified mail directed to the last known address of the person. The commissioner may designate a hearing officer from the department of revenue to conduct the hearings provided for in this section, who shall make findings of fact, conclusions of law, and proposed orders based thereon. If the commissioner concurs, he shall issue the order; or he may, upon review of the record, make such findings, conclusions, and issue such orders as, in his discretion, the record justifies.

Any person who engages in business as a dealer in this state without a certificate of registration after a certificate

of registration has been suspended or revoked, and each officer of any corporation which so engages in business shall be guilty of a misdemeanor and punishable as provided by the general law.

It shall be a misdemeanor, and punishable as such, for any person having a certificate of registration to use the same for the purpose of purchasing tangible personal property subject to the tax herein levied except for resale, unless authorized so to do by other provisions of this chapter and the rules and regulations adopted pursuant thereto.

Provided further, that it shall be a misdemeanor for any person who has a certificate of registration to use or consume any tangible personal property purchased or otherwise acquired under said certificate of registration and subject to the privilege taxes herein levied, without paying said privilege taxes.

Provided further, that any person violating these provisions shall forfeit the certificate of registration which shall be revoked in accordance with the provisions of this chapter, and such person shall not be entitled to register under this chapter for a period of twelve (12) months after said revocation shall have become final.

Any person who engages in the business of furnishing any of the things or services taxable under this chapter shall likewise apply for and obtain a certificate of registration as provided by this section.

The commissioner may, in his discretion, on the basis of adequate past experience, recall any certificate of registration where, in his judgment, the cost of administering the account is disproportionately high as compared to the

amount of tax which a taxpayer is remitting or will remit. Such recall shall be reviewable by a petition for a common law writ of certiorari in the chancery court of Davidson County, which petition shall be filed within ten (10) days from the date of such recall.

It shall be a misdemeanor for any dealer as herein defined to engage in business without a proper and valid certificate of registration. [Acts 1947, ch. 3, § 16; C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1.]

67-3042. *Penalties for violations by dealers.*—(a) Any dealer subject to the provisions of this chapter failing or refusing to furnish any return herein required to be made or failing or refusing to furnish a supplemental return or other data required by the commissioner, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding two hundred dollars (\$200) or be imprisoned in the county jail not exceeding sixty (60) days, or shall be punished by both fine and imprisonment in the discretion of the court for any such offense.

(b) Any dealer required to make, render, sign, or verify any return as aforesaid who makes a false or fraudulent return with intent to evade the tax hereby levied shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300) or be imprisoned in the county jail not less than thirty (30) days nor more than three (3) months, or shall be punished by both fine and imprisonment in the discretion of the court.

(c) Any dealer who shall violate any other provision of this chapter, punishment for which is not otherwise herein provided, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100) or imprisoned in the county jail for a period of not less than ten (10) days nor more than thirty (30) days or both fine and imprisonment at the discretion of the court. For a second or subsequent offense the penalty shall be double. [Acts 1947, ch. 3, § 10; C. Supp. 1950, § 1248.77 (Williams, § 1328.32).]

67-3043. *Forms furnished by commissioner.*—The commissioner shall design, prepare, print and furnish to all dealers, or make available to said dealers, all necessary forms for filing returns and instructions to insure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to secure such forms shall not relieve such dealer from the payment of said tax at the time and in the manner herein provided. [Acts 1947, ch. 3, § 13; C. Supp. 1950, § 1248.83 (Williams, § 1328.35).]

67-3044. *Administration of oaths.*—The commissioner and his assistants are authorized and empowered to administer the oath for the purpose of enforcing and administering the provisions of this chapter. [Acts 1947, ch. 3, § 13; C. Supp. 1950, § 1248.84 (Williams, § 1328.35).]

67-3045. *Rules and regulations.*—The commissioner shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter or the other laws, or the Constitution of this state or the United States, for the enforcement of the provisions of this chap-

ter and the collection of revenues hereunder. [Acts 1947, ch. 3, § 13; C. Supp. 1950, § 1248.85 (Williams, § 1328.35).]

67-3046. *Administrative costs—Rules concerning application of rate.*—(a) The cost of preparing and distributing the reports, forms, and paraphernalia for the collection of said tax and the inspection and enforcement duties required herein shall be borne by the revenues produced by this chapter, provisions for which are hereinafter made.

(b) The commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter. He is authorized to make and publish such rules and regulations not inconsistent with this chapter as he may deem necessary in enforcing its provisions in order that there shall not be collected on the average more than the rate levied herein. The commissioner is authorized to and he shall provide by rule and regulation a method for accomplishing this end, and he shall prepare instructions to dealers by setting out to them suitable brackets of prices for applying the tax or any other method that may be necessary for the purpose of the enforcement of this chapter and the collection of the tax imposed thereby. The use of tokens is forbidden and prohibited.

The commissioner is granted the power and authority to employ all necessary personnel and to purchase such supplies and equipment as may be necessary and incur any other necessary expenses as are proper for the enforcement and administration of this chapter. [Acts 1947, ch. 3, § 14; C. Supp. 1950, § 1248.86 (Williams, § 1328.36).]

67-3047. *Deposit and allocation of receipts.*—The commissioner shall deposit promptly to the credit of the state treasurer in state depositories all moneys received by him under the provisions of this chapter, and all such moneys shall be earmarked and allocated as follows:

Three ninths (3/9) of such moneys shall be earmarked and allocated specifically and exclusively to the general fund; two ninths (2/9) of such moneys shall be earmarked and allocated specifically and exclusively to educational purposes; and four ninths (4/9) of such moneys shall be earmarked and allocated specifically and exclusively to the following objects and purposes:

(1) Twelve and one-half percent (12½%) is appropriated to the several incorporated municipalities within the state of Tennessee to be allocated and distributed to them monthly by the commissioner of finance and administration in the proportion as the population of each municipality bears to the aggregate population of all municipalities within the state according to the latest federal census and other censuses authorized by law. Municipalities incorporated subsequent to the last decennial federal census shall, until the next decennial federal census, be eligible for an allotment, commencing on July 1, following incorporation, election and installation of officials, on the population basis determined under regulations of the state planning office and certified by that officer to the commissioner of finance and administration, provided an accurate census of population has been certified to the state planning office by the municipality. Municipalities now participating in allocation shall continue to do so on the basis of their population determined according to law.

A municipality having a population of twenty-five hundred (2,500) or more persons, according to the federal census of 1970 or any subsequent federal census, in which at least forty percent (40%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, tourist courts accommodation, tourist shops and restaurants, shall be defined as a "premiere type tourist resort" for purposes of this chapter. As an alternative to and in lieu of the allocation prescribed in the first paragraph of subsection (1), a premiere type tourist resort may elect to receive twelve and one-half percent (12.5%) of four ninths ($\frac{4}{9}$) of the tax actually collected and remitted by dealers within the boundaries of such resort. Any distribution made to a premiere type tourist resort pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a premiere type tourist resort pursuant to the election, the amount which would have been received by such resort had the resort not exercised the election shall be earmarked and allocated to the general fund.

Also, any municipality shall have the right to take not more than two (2) special censuses as its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the Tennessee state planning office. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the first day of the

next July, beginning July 1, 1958, following the certification of the census results by the federal bureau of the census or the state planning office to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforesaid.

Provided, that any other such special census of the entire municipality taken in the same manner provided herein, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under the provisions of this section.

Before distributing moneys to incorporated municipalities from the sales tax, as provided for herein, the commissioner of finance and administration shall make a deduction therefrom monthly of the sum of forty-two thousand four hundred and seventeen dollars (\$42,417) per month of the twelve and one-half percent ($12\frac{1}{2}\%$) of sales tax collections allocated to incorporated municipalities, which sum together with an appropriation per annum from the general fund of the state shall be apportioned and transmitted to the University of Tennessee for use by the university in establishing and operating a municipal technical advisory service in its institute for public service, and shall be used for studies and research in municipal government, publications, educational conferences and attendance there at and in furnishing technical, consultative and field services to municipalities in problems relating to fiscal administration, accounting, tax assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to municipal government. This program shall be carried on in cooperation with and with the advice of cities and

towns in the state acting through the Tennessee municipal league and its executive committee, which is recognized as their official agency or instrumentality.

(2) Eighty percent (80%) shall be used for education and shall be subject to appropriation, allocation, and allotment for that purpose.

(3) Four percent (4%) is allocated to the general fund.

(4) One percent (1%), or so much thereof as may be required, is appropriated to the department of revenue in addition to its regular appropriation to be expended by it in the administration and enforcement of this chapter; and

(5) Two and one-half percent ($2\frac{1}{2}\%$) is appropriated to the sinking fund account to be used by the state funding board for the payment of interest and principal becoming due on state bonds issued by the state of Tennessee.

In event the one and one half percent ($1\frac{1}{2}\%$) heretofore appropriated to the sinking fund board should prove to be insufficient to pay the principal and interest on state bonds heretofore issued to which five percent (5%) of the proceeds of the Tennessee retailers' sales tax up to twenty million dollars (\$20,000,000) and seven and one-half percent ($7\frac{1}{2}\%$) of proceeds in excess of twenty million dollars (\$20,000,000) have been pledged, then and in that event such additional amount of the gross proceeds of the sales tax as may be necessary to pay in full the principal and interest on such bonds is hereby pledged for the payment of the principal and interest on such bonds, and the

proceeds of the tax shall be used for that purpose before any distribution is made for any of the other purposes hereinabove specified. [Acts 1947, ch. 3, § 15; 1947, ch. 149, § 1; 1949, ch. 17, § 1; 1949, ch. 248, § 1; 1949, ch. 261, § 1; C. Supp., 1950, § 1248.87 (Williams, §§ 1328.37, 1328.37a); Acts 1951, ch. 241, § 1; 1953, ch. 50, § 1; 1953, ch. 195, § 1; modified; 1955, ch. 51, § 13; 1955, ch. 190, § 1; 1957, ch. 130, § 1; 1957, ch. 136, § 1; 1957, ch. 363, § 1; impl. am. Acts 1959, ch. 9, §§ 3, 14; Acts 1959, ch. 67, § 1; 1959, ch. 276, § 1; impl. am. Acts 1961, ch. 97, § 3; Acts 1961, ch. 187, § 1; 1963, ch. 276, § 1; 1965, ch. 281, § 1; 1967, ch. 315, § 1; 1969, ch. 172, § 1; 1970 (Adj. S.), ch. 430, § 1; 1971, ch. 117, § 5; impl. am. 1972 (Adj. S.), ch. 542, §§ 1-3, 15; 1972 (Adj. S.), ch. 589, § 1; 1973, ch. 232, § 1; 1974 (Adj. S.), ch. 494, § 1; 1974 (Adj. S.), ch. 516, § 2; 1974 (Adj. S.), ch. 593, § 1; 1975, ch. 197, § 1; 1976 (Adj. S.), ch. 466, § 4; 1977, ch. 6, §§ 1, 2; 1977, ch. 41, § 1; 1979, ch. 114, § 1; 1979, ch. 364, § 1.]

67-3048. *Implementation of chapter.*—The commissioner with the approval of the governor is authorized to employ all necessary assistance to administer this chapter properly and is also authorized to purchase all necessary supplies and equipment which may be required for this purpose, in order to put the chapter fully and completely into effect.

All necessary expenses of employees to administer this chapter shall be paid in the manner provided by law applicable to expenses of other state officials and employees.

The commissioner is authorized to require the assistance of any official of the state or of any political subdivision thereof in the administration of this chapter and

it shall be unlawful for any official of this state or of any political subdivision thereof to accept an application for a certificate of title to a motor vehicle as provided for in chapters 1 through 6 of Title 59 or for a certificate of registration for a vessel as provided for in chapter 22 of Title 70 unless the applicant shall present evidence that a sales or use tax, as provided for in this chapter, has been paid on the sales price of the vehicle or vessel by such applicant or such applicant has authority from the commissioner of revenue to file an application for such certificate of title or registration without the payment of the sales or use tax. It shall also be unlawful for any official referred to herein to accept an application for a certificate of title to a motor vehicle when the sale of such vehicle constitutes an occasional and isolated sale which is taxable under Section 67-3002(i) unless the applicant presents a bill of sale which evidences the sale price and also presents evidence that the sales or use tax has been paid on that amount, or in the absence of such a bill of sale, unless the said official requires evidence of payment of the sales or use tax on the fair market value of the vehicle as the same is determined by him by reference to the most recent issue of an authoritative automotive pricing manual, such as the N.A.D.A. Official Used Car Guide, Southeastern Edition. [Acts 1947, ch. 3, § 17; mod. C. Supp. 1950, § 1248.89 (Williams, § 1328.39); 1971, ch. 117, § 6; 1976, ch. 789, § 1.]

Section 2. The "1963 Local Option Revenue Act"
(§§ 67-3049—67-3056)

SECTION.	SECTION.
67-3049. Local option revenue act—Title.	67-3052. Distribution of proceeds.
67-3050. Local governments authorized to levy privilege tax.	67-3053. Election on resolution.
67-3051. Counties to have priority over cities —Rate determination.	67-3054. Collection and administration.
	67-3055. Repeal of local tax.
	67-3056. Relationship to other taxes.

67-3049. *Local option revenue act—Title.*—Sections 67-3049—67-3056 shall be known and may be cited as the "1963 Local Option Revenue Act." [Acts 1963, ch. 329, § 1.]

67-3050. *Local governments authorized to levy privilege tax.*—Any county by resolution of its county legislative body or any incorporated city or town by ordinance of its governing body is authorized to levy a tax on the same privileges subject to the "Retailers' Sales Tax Act" under this chapter as the same may be amended, which are exercised within such county, city or town, to be levied and collected in the same manner and on all such privileges but not to exceed one half ($\frac{1}{2}$) of the rates levied therein until June 30, 1981 and thereafter not to exceed three fourths ($\frac{3}{4}$) of the rates levied therein, provided that the tax so levied shall not exceed five dollars (\$5.00) on the sale or use of any single article of personal property whenever the rate of the tax does not exceed one percent (1%) of the rates levied therein, nor more than seven and one half dollars (\$7.50) whenever the rate of the tax exceeds one percent (1%) of the rates levied therein; provided, how-

ever, that no county or incorporated city or town is authorized to levy any tax on the sale, purchase, use, consumption or distribution of electric power or energy, or of natural or artificial gas, or coal and fuel oil; provided further that the operation of such resolution or ordinance shall be subject to approval of the voters as required in 67-3053 and to the other provisions of §§ 67-3049—67-3056.

Notwithstanding other provisions of this chapter, with respect to industrial and farm machinery as defined in § 67-3002, subparagraphs (n) and (p), and with respect to water sold to or used by manufacturers at the state tax rate of one percent (1%) as authorized in § 67-3003(g), the local tax thereon shall be imposed at the rate of one third of one percent (.33 $\frac{1}{3}$ %) whenever the rate of the local tax does not exceed one percent (1%) and at the rate of one half of one percent (.5%) whenever the rate of the local tax exceeds one percent (1%). The maximum local tax on the sale or use of any single article of industrial or farm machinery shall be as provided hereinabove.

Nothing herein contained shall be deemed to permit an increase in the privilege tax hereby authorized, without the ratification thereof in the manner provided in § 67-3053, regardless of the nature of any previous call and regardless of future action of the general assembly regarding the levy of the tax authorized by the Retailers' Sales Tax Act under chapter 30 of title 67. [Acts 1963, ch. 329, § 2; 1968 (Adj. S.), ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972 (Adj. S.), ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974 (Adj. S.), ch. 675, § 2; 1975, ch. 316, § 2; 1976 (Adj. S.), ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978 (Adj. S.), ch. 592, § 2; impl. am.

Acts 1978 (Adj. S.), ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980, ch. 886, § 2.]

67-3051. *Counties to have priority over cities—Rate determination.*—The levy of the tax by a county shall preclude, to the extent of the county tax, any city or town within such county from levying the tax, but a city or town shall at any time have the right to levy the tax at a rate equal to the difference between the county tax and the maximum rate authorized herein. For Cities and Towns having territory in more than one County, the term 'cities and towns' is defined as that part of their territory in which they are not precluded by a County tax.

If an ordinance levying the tax herein authorized is adopted by a city or town prior to adoption of the tax by the county in which the city or town is located, the effectiveness of the ordinance shall be suspended for a period of forty (40) days beyond the date on which it would otherwise be effective under the charter of the city or town. If during this forty-day period, the quarterly county court adopts a resolution to levy the tax at least equal to the rate provided in such ordinance, the effectiveness of the ordinance shall be further suspended until it is determined whether the county tax is to be operative, as provided, in § 67-3053. If the county tax becomes operative by approval of the voters as provided in § 67-3053, the ordinance shall be null and void, but if the county tax does not become operative the ordinance shall become effective on the same date that the county tax is determined to be non-operative, and the election required by § 67-3053 shall be held. After initial adoption of the tax by a county or a city or town therein, the tax rate may be increased by a city, town or

county under the same procedure. If the tax levied by a quarterly county court is finally determined to be non-operative, such action shall not preclude subsequent action by the county to adopt the tax at a rate at least equal to the city or town tax rate, in which event the city or town tax shall cease to be effective; provided, however, that the city or town shall receive from the county tax the same amounts as would have been received from the city or town tax until the end of the current fiscal year of the city or town. [Acts 1963, ch. 329, § 3; 1968, ch. 488, § 2.]

67-3052. *Distribution of proceeds.*—The tax levied by a county under §§ 67-3049—67-3056 shall be distributed as follows:

(1) One-half ($\frac{1}{2}$) of the proceeds shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed.

(2) The other half ($\frac{1}{2}$) shall be distributed as follows:

(a) Collections for privileges exercised in unincorporated areas, to such fund or funds of the county as the governing body of the county shall direct.

(b) Collections for privileges exercised in incorporated cities and towns, to the city or town in which the privilege is exercised.

(c) Provided, however, that a county and city or town may by contract provide for other distribution of the half ($\frac{1}{2}$) not allocated to school purposes. [Acts 1963, ch. 329, § 4; 1967, ch. 90, § 1.]

67-3053. *Election on resolution.*—(a) Any ordinance or resolution of a county or of a city or town levying the

tax under authority of §§ 67-3049—67-3056 shall not become operative until approved in an election herein provided in the county, or the city or town, as the case may be. The county election commission shall hold an election thereon, providing options to vote "FOR" or "AGAINST" the ordinance or resolution, within sixty (60) days after the receipt of a certified copy of such ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative. If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns. Provided, however, that no tax shall be collected under any such ordinance or resolution until the first day of a month occurring at least thirty (30) days after the operative date.

Notwithstanding any provisions of this chapter to the contrary, a county court or the governing body of any incorporated city or town may authorize, by resolution or ordinance, the state to collect a local sales tax previously authorized and approved pursuant to the provisions of this chapter. Such authorization by any county court or by the governing body of any incorporated city or town shall be fully effective without necessity of a referendum on such resolution; provided, however that no tax shall be collected under any such authorization until the first day of a month occurring at least thirty (30) days after receipt of a certified copy of such resolution or ordinance by the commissioner of revenue.

(b) If a quarterly county court adopts a resolution to levy the tax at the same rate that is operative in a city

or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of such city or town. If the county tax is at a higher rate than the rate of the city or town tax, the election shall be also open to the voters of the city or town. Provided further, that should any county or city or town hold an election hereunder, and the ordinance or resolution is rejected, no other election thereon shall be held by such county, city or town for a period of six (6) months from the date of the holding of such prior election, except that in those counties of the state having a population of not more than seven hundred fifty thousand (750,000) nor less than seven hundred thousand (700,000) and not more than two hundred seventy-eight thousand (278,000) and not less than two hundred fifty thousand (250,000) according to the federal census of 1970 or any subsequent federal census, in case of rejection, the limitation period on subsequent elections shall be one (1) year from the date of the holding of such prior election.

(c) A resolution or ordinance levying the tax authorized may be initiated by petition of the voters in the following manner. The petition shall be addressed to the quarterly county court or the governing body of the city or town requesting that a resolution or ordinance be adopted levying the tax and shall state the rate of the tax, whether the tax is to be collected by the county, city or town, or by the department of revenue of the state, and shall specify the officer against whom suit for the recovery of any tax illegally assessed or collected shall be brought. The petition shall be signed by at least a number of registered voters in the taxing jurisdiction equal to ten per-

cent (10%) of the total number of registered voters in the taxing jurisdiction on the date the petition is filed. Provided, a petition requesting a resolution of the quarterly county court may not be signed by a registered voter in a city or town where a tax herein authorized is operative equal to that levied by the resolution, and the registered voters therein shall not be considered in arriving at the required percentage. A petition requesting a resolution shall be filed with the county court clerk, a petition requesting an ordinance with the chief clerical officer of the city or town, and a photographic copy of the petition shall be filed at the same time with the county commissioners of elections who shall be the judges of the sufficiency of the petition. If within thirty (30) days from the filing of a petition a resolution or ordinance is not adopted as requested and a certified copy filed with the commissioners of elections, the petition shall constitute a resolution or ordinance, and the commissioners of elections shall hold an election thereon as in paragraph (a) above. [Acts 1963, ch. 329, § 5; 1967, ch. 113, § 1; 1968 (Adj. S.), ch. 488, § 3; 1971, ch. 83, § 1; 1972 (Adj. S.), ch. 455, § 1.]

67-3054. *Collection and administration.*—In collecting and administering the tax levied under the authority of §§ 67-3049—67-3056 counties, cities and towns shall have all the powers which the commissioner of revenue has in collecting and administering the state sales tax. Rules and regulations promulgated by the commissioner of revenue may be adopted by reference, and penalties and interest for delinquencies imposed equal to the rates provided in § 67-3026. When so provided in the resolution or ordinance of adoption, the department of revenue of the state of Tennessee shall collect such tax concurrently with the col-

lection of the state tax in the same manner as the state tax is collected, provided that said department has determined that such collection of said tax is feasible, and has promulgated rules and regulations governing such collection. The department shall remit the proceeds of the tax to the county, city or town levying the tax, less a reasonable amount of percentage as determined by the department to cover the expenses of administration and collection. The county, city or town shall furnish a certified copy of the adopting resolution or ordinance to the department of revenue in accordance with regulations prescribed by the department. Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in § 67-3033, it being the intention of the legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected be conformed to apply to the recovery of taxes illegally assessed and collected under the authority of §§ 67-3049 - 67-3056. Notice of any tax paid under protest shall be given to the county court or the governing body of the city or town. The resolution or ordinance levying the tax shall designate the county or municipal officer against whom suit may be brought for recovery in the event the tax is collected by the department of revenue. [Acts 1963, ch. 329, § 6.]

67-3055. *Repeal of local tax.*—Any ordinance or resolution of a county, city or town adopted in accordance with §§ 67-3049—67-3056 may be repealed in the same manner as provided herein for its adoption; provided, that any election for the repeal of a county tax shall be open to the voters of the entire county. [Acts 1963, ch. 329, § 7.]

67-3056. *Relationship to other taxes.*—The tax authorized by §§ 67-3049—67-3056 is and shall be in addition to all other taxes which counties, cities and towns are now authorized to levy, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now authorized to be levied. [Acts 1963, ch. 329, § 8.]

TENNESSEE SALES & USE TAX LAWS—1983 REPLACEMENT

PARALLEL REFERENCE TABLE

Former Sections	1983 Replacements	Former Sections	1983 Replacements
67-2621	67-2-121	67-2733	67-4-813
67-2622	67-2-114	67-2801—67-2814	R '63, ch.
67-2623	67-2-115		194, § 6; 1976
67-2624	67-2-101		(Adj. S.), ch.
67-2625	67-2-115		537, § 56; 1983,
67-2626	67-2-116		ch. 189, § 1
67-2627	67-2-120	67-2901	67-4-901
67-2628	67-2-115	67-2902	67-4-903
67-2629	67-2-120	67-2903	67-4-904
67-2630	67-2-108	67-2904	67-4-902
67-2631	67-2-117	67-2905—67-2907	67-4-905
67-2632	67-2-118	67-2908	67-4-906
67-2633	67-2-119	67-2909	67-4-907
67-2634	67-2-113	67-2910	67-4-908
67-2635 (1st para.)	67-2-121	67-2911	67-4-909
(2nd para.)	67-2-104	67-2912—67-2917	67-4-910
67-2701	67-4-801	67-2918	67-4-911
67-2702	67-4-806, 67-4-807	67-2919	67-4-912
67-2703	67-4-804	67-2920	67-4-913
67-2704	67-4-805	67-2921	67-4-914
67-2705	67-4-802	67-2922	67-4-915
67-2706	67-4-808	67-2923	67-4-916
67-2707, 67-2708	67-4-809	67-2924	67-4-917
67-2709—67-2713	67-4-810	67-2925	67-4-918
67-2714—67,2722	67-4-811	67-2926	Obsolete
67-2723	67-4-812	67-2927	Obsolete
67-2724	67-4-814	67-3001	67-6-101
67-2725	67-4-815	67-3002	67-6-102
67-2726	67-4-816	67-3003 (1st para.)	67-6-201
67-2727	67-4-803	67-3003(a)	67-6-202
67-2728	67-4-817,	(b)	67-6-203
	67-4-820	(c), (d)	67-6-204
67-2729	67-4-819	(e)	67-6-205
67-2730	67-4-818	(f)	67-6-501
67-2731	Obsolete	(g)	67-6-206
67-2732	Obsolete	(h)	67-6-207
		(i)	67-6-208

PARALLEL REFERENCE TABLE

Former Sections	1983 Replacements	Former Sections	1983 Replacements
67-3004(a)-(e)	67-6-209	(c)	67-6-522
(f)	67-6-308	(d)	67-6-502
67-3005	67-6-210	67-3021	67-6-509
67-3006	Obsolete	67-3022—67-3024	67-6-504
67-3007	67-6-211, 67-6-313	(1st and	
67-3008	67-6-507	3rd para.)	
67-3009	67-6-101	67-3024 (2nd para.)	67-6-204
67-3010	67-6-323	67-3025(a), (c)	67-6-513
67-3011	67-6-301	(b), (c)	67-6-518
67-3012		67-3026(a)-(c)	67-6-516
(1)	67-6-329	(d)	67-6-505
(2)	67-6-325	67-3026(e)	67-6-506
(3)	67-6-326	67-3027	67-6-512
(4)	67-6-324	67-3028 (1st and	
(5)	67-6-305	2nd para.)	67-6-507
(6)	67-6-315	(3rd para.)	67-6-508
(7)	67-6-302	67-3029 (1st para.)	67-6-517
(8)(a)	67-6-321	(2nd para.)	67-6-507
(8)(b)	67-6-327	67-3030—67-3032	67-6-517
(9)	67-6-320	67-3033 (1st para.)	67-6-515
(10)	67-6-316	(2nd-4th,	
(11)	67-6-306	6 para.)	67-6-520
(12)	67-6-318	(5th para.)	67-6-527
(13)	67-6-303	(7th para.)	67-6-522
(14)	67-6-319	(8th para.)	67-6-521
(15)	Obsolete	(9th para.)	67-6-519
(16)	67-6-304	67-3034—67-3037	67-6-523
(17)	67-6-310	67-3038, 67-3039	67-6-524
(18)	67-6-312	67-3040	67-6-525
(19)	67-6-314	67-3041 (1st-3rd para.)	67-6-602
(20)	67-6-311	(4th para.)	67-6-511
(21)	67-6-328	(5th para.)	67-6-604
(22)	67-6-317	(6th and	
(23)	67-6-307	12th para.)	67-6-606
67-3013	67-6-309	(7th and	
67-3014	67-6-322	8th para.)	67-6-607
67-3015	67-6-510	(9th para.)	67-6-603
67-3016	67-6-501	(10th para.)	67-6-601
67-3017	67-6-102	(11th para.)	67-6-605
67-3018	67-6-501	67-3042	67-6-526
67-3019	R '69, ch. 3, § 2	67-3043	67-6-403
67-3020(a)	67-6-503	67-3044	67-6-404
(b)	67-6-514	67-3045	67-6-402

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67-3046(a)	67-6-403	67-3123	67-4-1020, 67-4-1021
(b) (1st para.)	67-6-401,	67-3124	67-4-1025
	67-6-402, 67-6-512	67-3125	67-4-1008
(b) (2nd para.)	67-6-405	67-3126	67-4-1014
67-3047	67-6-103	67-3127	67-4-1023
67-3048 (1st and		67-3201	60-3-101
2nd para.)	67-6-402	67-3202	60-3-102
(3rd para.)	67-6-406	67-3203	60-3-103
67-3049	67-6-701	67-3204	60-3-104
67-3050(a)	67-6-702, 67-6-704,	67-3205	60-3-105
	67-6-705	67-3206	60-3-106
(b)	67-6-702	67-3208	60-3-107
(c)	67-6-705	67-3209	60-3-108
(d)	67-6-705, 67-6-708	67-3210	60-3-109
67-3051	67-6-703	67-3211	60-3-110
67-3052	67-6-712	67-3212	60-3-111
67-3053(a)	67-6-706, 67-6-711	67-3213	60-3-112
(b)	67-6-706	67-3214	60-3-113
(c)	67-6-707	67-3215	60-3-114
67-3054	67-6-710	67-3216—67-3225	R '78 (Adj.
67-3055	67-6-709		S.), ch. 761,
67-3056	67-6-701		§ 116
67-3101	67-4-1001	67-3301	67-3-601
67-3102	67-4-1002, 67-4-1004,	67-3302	67-3-602
	67-4-1005, 67-4-1009,	67-3303	67-3-603
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67-3103	67-4-1003	67-3305	67-3-605
67-3104	67-4-1006	67-3306	67-3-606
67-3105	67-4-1019	67-3307	67-3-607
67-3106	67-4-1009	67-3308	67-3-608
67-3107	67-4-1007	67-3309	67-3-609
67-3108	67-4-1010	67-3310	67-3-610
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67-3110	67-4-1001, 67-4-1022	67-3312	67-3-612
67-3111	67-4-1012, 67-4-1013,	67-3313	67-3-613
	67-4-1014	67-3314	67-3-614
67-3112	67-4-1011	67-3315	67-3-615
67-3113—67-3116	67-4-1015	67-3316	67-3-616
67-3117	67-4-1016	67-3317	67-3-617
67-3118	67-4-1017	67-3318	67-3-618
67-3119	67-4-1016	67-3401	67-3-701
67-3120	67-4-1018	67-3402	67-3-702
67-3121	67-4-1016	67-3403(a)	67-3-703
67-3122	67-4-1024	(b)	67-3-703, 67-3-704

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(c)	67-3-705		
(d)	67-3-706	67-3408	67-3-710
67-3404	67-3-703	67-3409—67-3412	R '78 (Adj.
67-3405	67-3-707		S.), ch. 761, § 116
67-3406	67-3-708	67-3501	67-3-101
67-3407	67-3-709	67-3502	67-3-102

CHAPTER 6

SALES AND USE TAXES

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	General Provisions	67-6-304. Blood and plasma.
67-6-101.	Short title—	67-6-305. Demonstration property.
	Nature of tax.	67-6-306. Divorce—Transfer of automobile.
67-6-102.	Definitions.	67-6-307. Energy or resource recovery facilities.
67-6-103.	Deposit and allo- cation of receipts.	67-6-308. Federal government.
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67-6-302.	Aircraft parts and supplies.	67-6-323. Religious publications.
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67-6-325. Telephone cooperatives.	67-6-511. Inclusion of lessee's sales in dealer's return.
67-6-326. Vessels.	67-6-512. Form of payment.
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67-6-329. Miscellaneous exemptions.	67-6-515. When tax becomes delinquent.
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67-6-403. Forms.	67-6-519. Lien for taxes.
67-6-404. Oaths.	67-6-520. Distress warrants.
67-6-405. Personnel, supplies, and expenses.	67-6-521. Injunctions.
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67-6-507. Credits to dealer.	67-6-602. Certificate of registration.
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67-6-606. Operating without certificate— Misdemeanor.	67-6-704. Exemptions.
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	67-6-706. Referendum.
	67-6-707. Petition for tax.
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PART I—GENERAL PROVISIONS

67-6-101. *Short title—Nature of tax.*—This chapter shall be known as the “Retailers’ Sales Tax Act” and the tax imposed by this chapter shall be in addition to all other privilege taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied. [Acts 1947, ch. 3, §§ 1, 3; C. Supp. 1950, §§ 1248.50, 1248.52 (Williams, §§ 1328.22, 1328.24); T.C.A. (orig. ed.), §§ 67-3001, 67-3009.]

67-6-102. *Definitions.*—The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(1) “Business” includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit, or advantage, either direct or in-

direct. "Business" shall not be construed to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. Provided, however, that it shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, (which terms shall be construed to include trailers and special motor equipment sold in conjunction therewith), as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are: married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft which are so based shall constitute evidence thereof. Provided further, however, that it shall not be construed to include those occasional or isolated sales or transactions by such a person involving mobile homes or house trailers, as defined by § 55-4-111, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller;

(2) "Commissioner" means and includes the commissioner of revenue of the state of Tennessee, or his duly authorized assistants;

(3) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever;

(4) "Dealer" means every person, as used in this chapter, who:

(A) Manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in this state;

(B) Imports or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in this state;

(C) Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, or consumption, or distribution, or storage to be used or consumed in this state, tangible personal property as defined herein;

(D) Has sold at retail, or used, or consumed, or distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property;

(E) Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without transferring title thereto;

(F) Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the

use or possession of such property without acquiring title thereto;

(G) Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room, or house, warehouse, or other place of business;

(H) Furnishes any of the things or services taxable under this chapter;

(I) Has any representative, agent, salesman, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, irrespective of whether such representative, agent, salesman, canvasser or solicitor is located here permanently or temporarily, and irrespective of whether an established place of business is maintained in this state;

(J) Distributes catalogues or other advertising matter and by reason thereof receives and accepts orders from residents of this state; and

(K) Uses tangible personal property, whether the title to such property is in him or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of his contract or to fulfill his contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid;

(5) "Fabricating or processing tangible personal property for resale" means only tangible personal property which is fabricated or processed for ultimate use or consumption off the premises of the one engaging in such fabricating or processing;

(6) "Farm equipment and machinery" means any appliance used directly and principally for the purpose of producing agricultural products, including nursery pro-

ducts, for sale and use or consumption off the premises, the retail price of which, for any such single article, exceeds two hundred and fifty dollars (\$250), but shall not include an automobile, truck, household appliances or property which becomes real property when erected or installed. Notwithstanding the foregoing provisions, grain bins and attachments thereto which are sold to or used by a farmer shall be considered "farm equipment and machinery";

(7) "Gross sales" means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined herein, without any deduction whatsoever of any kind or character, except as provided in this chapter;

(8) "Industrial machinery" means:

(A) Machinery, including repair parts and any necessary repair or taxable installation labor therefor, which is directly and primarily utilized in fabricating or processing tangible personal property for resale, or equipment primarily used for air pollution control or stream pollution control, where the use of such machinery or equipment is by one who engages in such fabrication or processing as his principal business either within or without this state, or such use by a county or municipality or a contractor pursuant to a contract with such county or municipality for use in stream pollution control or sewage systems; and

(B) Machinery, the cost of which, for any such single article, exceeds one thousand dollars (\$1,000), which is directly and primarily utilized for the purpose of remanufacturing industrial machinery as defined in subdivision (8)(A) when such utilization is by one whose principal business is that of remanufacturing industrial machinery;

(9) "Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title of such property;

(10) "Livestock and poultry feed" means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with said ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed;

(11) "Persons" includes any individual, firm, co-partnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. It is further defined to include any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

(12) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, or use, or consumption, or storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter;

(13)(A) "Retail sales" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property, and shall mean and include all such transactions as the commissioner of revenue upon investigation finds to be in lieu of sales; provided that sales for resale must be in strict compliance with rules

and regulations. Any dealer making a sale for resale which is not in strict compliance with rules and regulations shall himself be liable for and pay the tax;

(B) "Retail sale" or "sale at retail" shall include the furnishing of things or services taxable under this chapter;

(C) "Retail sale" or "sale at retail" includes the delivery in this state of tangible personal property by a retailer who has no place of business in this state, if the delivery is made to a consumer in this state or to another person for redelivery to a consumer in this state pursuant to a retail sale made by such retailer to such consumer;

(D) Nothing in this subdivision (13)(D) or subdivision (13)(C) shall be construed to impose a tax which is invalid either under the commerce clause or the due process clause of the United States Constitution. In addition, the department of revenue may enter into a reciprocal agreement with the comparable department of another state to furnish records concerning purchases made by citizens of the other state from a dealer in this state where the dealer collects neither a sales nor a use tax on such sales provided that the other state agrees to furnish the same records to this state and each sale is in excess of five hundred dollars (\$500). Provided further, all dealers in Tennessee making sales to purchasers in another state where no sales or use tax is collected shall furnish the department copies of all such invoices or suitable substitutes for sales in excess of five hundred dollars (\$500) with their monthly returns provided that the department notifies such dealers of the existence of a reciprocal agreement;

(E) "Sale at retail," "use," "storage," and "consumption" shall not include the sale, use, storage or consumption of industrial materials and explosives for future processing, manufacture or conversion into articles of tangible personal property for resale where

such industrial materials and explosives become a component part of the finished product or are used directly in fabricating, dislodging, sizing, converting, or processing such materials or parts thereof, and such terms shall not include materials, containers, labels, sacks, bags or bottles used for packaging tangible personal property when such property is either sold therein directly to the consumer or when such use is incidental to the sale of such property for resale;

(F) "Retail sale," "sale at retail," and "retail sales price" shall include the following services:

(i) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration. The tax shall not apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more;

(ii) Charges for services rendered by persons operating or conducting a garage, parking lot or other place of business for the purpose of parking or storing motor vehicles. The tax shall not apply, however, to charges for such services made by the state and its political subdivisions when providing on-street parking space for which charges are collected or when operating or conducting a garage or parking lot which is unattended and such charges are collected by parking meters;

(iii) The furnishing of telephone service to regular subscribers, such service embracing local (flat charge or metered) calls, long-distance calls, leased lines or equipment for the vocal or written transmission of messages, as well as any additional or incidental services for which a charge is made; and the transmission for a consideration of messages by telegraph;

(iv) The performing for a consideration of any repair services with respect to any kind of tangible personal property;

(v) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry-cleaning or car-wash facilities, where a charge is made therefor;

(vi) The installing of tangible personal property with remains tangible personal property after installation where a charge is made for such installation whether or not such installation is made as an incident to the sale thereof and whether or not any tangible personal property is transferred in conjunction with such installation service; and

(vii) The enriching of uranium materials, compounds, or products, which is performed on a cost-plus basis or on a "toll enrichment fee" basis;

(14)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional, or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property.

(B) "Sale" shall also mean such transfer of customized or packaged computer software, which is defined to mean, information and directions loaded into a computer which dictate different functions to be performed by the computer, whether contained on tapes, discs, cards, or other device material. For such purpose, computer software shall be considered tangible personal property, however, the fabrication of software by a person for his own use on consumption

shall not be considered a taxable "use" under subdivision (18) of this section or any other section of this chapter.

(C) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale; provided, however, that where title to property is taken by an industrial development corporation (within the meaning of chapter 53 of title 7), but the property is leased to a taxpayer, the transaction shall be regarded for purposes of this chapter, as a sale to and purchase by the industrial development corporation followed by a lease, regardless of whether the lessee has an option to purchase any or all of the property from the industrial development corporation.

(D) "Sale" includes the furnishing of any of the things or services taxable under this chapter;

(15) "Sales price" means the total amount for which tangible personal property is sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses, or any other expense whatsoever; provided, that cash discounts allowed and taken on sales shall not be included; provided, that the term "sales price" shall not include any additional consideration given by the purchaser for the privilege of making deferred payments regardless of whether such additional consideration shall be known as interest, time price differential on conditional sales contracts, carrying charges or any other name by which it shall be known;

(16) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business;

(17) "Tangible personal property" means and includes personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. "Tangible personal property" shall not include stocks, bonds, notes, insurance, or other obligations or securities;

(18) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it shall not include the sale at retail of that property in the regular course of business; and

(19) "Use tax" referred to in this chapter includes the "use," the "consumption," the "distribution," and the "storage" as herein defined. [Acts 1947, ch. 3, §§ 2, 4; C. Supp. 1950, §§ 1248.51, 1248.53 (Williams, §§ 1328.23, 1328.25); Acts 1951, ch. 3, § 1; modified; 1955, ch. 51, §§ 1-5, 10; 1955, ch. 242, §§ 1, 8; impl. am. Acts 1959, ch. 9, § 14; Acts 1959, ch. 15, § 1; 1963, ch. 38, §§ 1, 2, 7; 1963, ch. 172, §§ 1, 2; 1965, ch. 3, § 1; 1965, ch. 335, § 1; 1968 (Adj. S.), ch. 556, § 1; 1968 (Adj. S.), ch. 601, § 1; 1969, ch. 95, § 1; 1970 (Adj. S.), ch. 390, § 1; 1971, ch. 117, § 1; 1971, ch. 149, § 1; ch. 151, § 1; 1972 (Adj. S.), ch. 528, § 1; 1972 (Adj. S.), ch. 709, § 1; 1972 (Adj. S.), ch. 731, § 1; 1972 (Adj. S.), ch. 757, § 1; 1972 (Adj. S.), ch. 769, § 1; 1973, ch. 179, § 1; 1974 (Adj. S.), ch. 778, § 1; 1976 (Adj. S.), ch. 442, § 1; 1977, ch. 42, § 1; 1977, ch. 250, § 1; 1978 (Adj. S.), ch. 565, §§ 1, 2; 1978 (Adj. S.), ch. 789, §§ 1, 2;

1978 (Adj. S.), ch. 921, § 1; 1979, ch. 352, § 1; 1980 (Adj. S.), ch. 602, § 1; 1981, ch. 229, § 1; T.C.A. (orig. ed.), §§ 67-3002, 67-3017.]

67-6-103. *Deposit and allocation of receipts.*—The commissioner shall deposit promptly to the credit of the state treasurer in state depositories all moneys received by him under the provisions of this chapter, and all such moneys shall be earmarked and allocated as follows:

(1) Three ninths (3/9) of such moneys shall be earmarked and allocated specifically and exclusively to the general fund;

(2) Two ninths (2/9) of such moneys shall be earmarked and allocated specifically and exclusively to educational purposes; and

(3) Four-ninths (4/9) of such moneys shall be earmarked and allocated specifically and exclusively to the following objects and purposes:

(A)(i) Twelve and one-half percent (12½) is appropriated to the several incorporated municipalities within the state of Tennessee to be allocated and distributed to them monthly by the commissioner of finance and administration in the proportion as the population of each municipality bears to the aggregate population of all municipalities within the state according to the latest federal census and other censuses authorized by law. Municipalities incorporated subsequent to the last decennial federal census shall, until the next decennial federal census, be eligible for an allotment, commencing on July 1, following incorporation, election and installation of officials, on the population basis determined under regulations of the state planning office and certified by that officer to the commissioner of finance and administration, pro-

vided an accurate census of population has been certified to the state planning office by the municipality. Municipalities now participating in allocation shall continue to do so on the basis of their population determined according to law;

(ii) A municipality having a population of twenty-five hundred (2,500) or more persons, according to the federal census of 1970 or any subsequent federal census, in which at least forty percent (40%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, tourist courts accommodation, tourist shops and restaurants, shall be defined as a "premiere type tourist resort" for purposes of this chapter. As an alternative to and in lieu of the allocation prescribed in subdivision (3)(A)(i), a premiere type tourist resort may elect to receive twelve and one-half percent ($12\frac{1}{2}\%$) of four ninths ($\frac{4}{9}$) of the tax actually collected and remitted by dealers within the boundaries of such resort. Any distribution made to a premiere type tourist resort pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a premiere type tourist resort pursuant to the election, the amount which would have been received by such resort had the resort not exercised the election shall be earmarked and allocated to the general fund;

(iii) Any municipality shall have the right to take not more than two (2) special censuses at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decenium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the Tennessee state planning office. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, ef-

fective on the first day of the next July following the certification of the census results by the federal bureau of the census or the state planning office to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforesaid;

(iv) Provided, that any such special census of the entire municipality taken in the same manner provided herein, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under the provisions of this section;

(v) Before distributing moneys to incorporated municipalities from the sales tax, as provided for herein, the commissioner of finance and administration shall make a deduction therefrom monthly of the sum of fifty thousand seven hundred and fifty dollars (\$50,750) per month of the twelve and one-half percent ($12\frac{1}{2}\%$) of sales tax collections allocated to incorporated municipalities, which sum together with an appropriation per annum from the general fund of the state shall be apportioned and transmitted to the University of Tennessee for use by the university in establishing and operating a municipal technical advisory service in its institute for public service, and shall be used for studies and research in municipal government, publications, educational conferences and attendance thereat and in furnishing technical, consultative and field services to municipalities in problems relating to fiscal administration, accounting, tax assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to municipal government. This program shall be carried on in cooperation with and with the advice of cities and towns in the state acting through the Tennessee municipal league and its executive committee, which is recognized as their official agency or instrumentality;

(B) Eighty percent (80%) shall be used for education and shall be subject to appropriation, allocation, and allotment for that purpose;

(C) Four percent (4%) is allocated to the general fund;

(D) One percent (1%), or so much thereof as may be required, is appropriated to the department of revenue in addition to its regular appropriation to be expended by it in the administration and enforcement of this chapter; and

(E) Two and one-half percent (2½%) is appropriated to the sinking fund account to be used by the state funding board for the payment of interest and principal becoming due on state bonds issued by the state of Tennessee. [Acts 1947, ch. 3, § 15; 1947, ch. 149, § 1; 1949, ch. 17, § 1; 1949, ch. 248, § 1; 1949, ch. 261, § 1; C. Supp. 1950, § 1248.87 (Williams, §§ 1328.37, 1328.37a); Acts 1951, ch. 241, § 1; 1953, ch. 50, § 1; 1953, ch. 195, § 1; modified; 1955, ch. 51, § 13; 1955, ch. 190, § 1; 1957, ch. 130, § 1; 1957, ch. 136, § 1; 1957, ch. 363, § 1; impl. am. Acts 1959, ch. 9, §§ 3, 14; Acts 1959, ch. 67, § 1; 1959, ch. 276, § 1; impl. am. Acts 1961, ch. 97, § 3; Acts 1961, ch. 187, § 1; 1963, ch. 276, § 1; 1965, ch. 281, § 1; 1967, ch. 315, § 1; 1969, ch. 172, § 1; 1970 (Adj. S.), ch. 430, § 1; 1971, ch. 117, § 5; 972 (Adj. S.), ch. 542, §§ 1-3, 15; 1972 (Adj. S.), ch. 589, § 1; 1973, ch. 232, § 1; 1974 (Adj. S.), ch. 494, § 1; 1974 (Adj. S.), ch. 516, § 2; 1974 (Adj. S.), ch. 593, § 1; 1975, ch. 197, § 1; 1976 (Adj. S.), ch. 466, § 4; 1977, ch. 6, §§ 1, 2; 1977, ch. 41, § 1; 1979, ch. 114, § 1; 1979, ch. 364, § 1; 1983, ch. 143, § 1; T.C.A. (orig. ed.), § 67-3047.]

PART 2—TAXES IMPOSED

67-6-201. *Taxable privilege declared.*—It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling

tangible personal property at retail in this state, or who uses or consumes in this state any item or article of tangible personal property as defined in this chapter, irrespective of the ownership thereof or any tax immunity which may be enjoyed by the owner thereof, or who is the recipient of any of the things or services taxable under this chapter, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined in this chapter, or who leases or rents such property, either as lessor or lessee, within the state of Tennessee. [Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335 § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1982 (Adj. S.), ch. 610, § 1; 1982 (Adj. S.), ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003.]

67-6-202. *Property sold at retail.*—For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied at the rate of four and one-half percent (4½%) of the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale. [Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971,

ch. 117, § 2; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1982 (Adj. S.), ch. 610, § 1; 1982 (Adj. S.), ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(a).]

67-6-203. *Property used, consumed, distributed or stored.*—A tax is levied at the rate of four and one-half percent ($4\frac{1}{2}\%$) of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state; provided there shall be no duplication of the tax. [Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1982 (Adj. S.), ch. 610, § 1; 1982 (Adj. S.), ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(b).]

67-6-204. *Lease or rental of property.*—It is declared to be the intention of this chapter to impose a tax on the gross proceeds of all leases and rentals of tangible personal property in this state where the lease or rental is a part of the regularly establishment business, or the same is incidental or germane thereto. The tax is levied as follows:

(1) At the rate of four and one-half percent ($4\frac{1}{2}\%$) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, where the lease or rental of such property is an established business,

or part of an established business, or the same is incidental or germane to the business.

(2) At the rate of four and one-half percent ($4\frac{1}{2}\%$) of the monthly lease or rental price by lessee or renter, or contracted or agreed to be paid by lessee or renter, to the owner of the tangible personal property. [Acts 1947, ch. 3, §§ 3, 8; C. Supp. 1950, §§ 1248.52, 1248.64 (Williams, §§ 1328.24, 1328.30); Acts 1955, ch. 51, §§ 7, 8, 12; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1982 (Adj. S.), ch. 610, § 1; 1982 (Adj. S.), ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), §§ 67-3003(c), (d), 67-3024.]

67-6-205. *Services*.—There is levied a tax at the rate of four and one-half percent ($4\frac{1}{2}\%$) of the gross charge for all services taxable under this chapter. [Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1982 (Adj. S.), ch. 610, § 1; 1982 (Adj. S.), ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003 (e).]

67-6-206. *Industrial machinery and raw materials*.—*Exemptions*.—(a) Notwithstanding other provisions of this chapter, tax imposed with respect to industrial machinery as defined in § 67-6-102 shall be at the following rate:

- (1) July 1, 1980—June 30, 1981— .75% ;
- (2) July 1, 1981—June 30, 1982— .50% ;
- (3) July 1, 1982—June 30, 1983— .25% ; and
- (4) On and after July 1, 1983, no tax is due with respect to industrial machinery.

(b)(1) Tax at the rate of one percent (1%) is likewise imposed with respect to water when sold to or used by manufacturers. Tax at the rate of one and one-half percent (1½%) shall be imposed with respect to gas, electricity, fuel oil, coal and other energy fuels when sold to or used by manufacturers.

(2) For the purpose of this subsection a manufacturer is defined as one whose principal business is fabricating or processing tangible personal property for resale.

(3) Such substances shall be exempt entirely from the taxes imposed by this chapter whenever it may be established to the satisfaction of the commissioner, by separate metering or otherwise, that they are exclusively used directly in the manufacturing process, coming into direct contact with the article being fabricated or processed by the manufacturer, and being expended in the course of such contract. Whenever the commissioner determines that the use of such substances by a manufacturer meets said test, he shall issue a certificate evidencing the entitlement of the manufacturer to the exemption, and a certified copy thereof shall be furnished by the manufacturer to his supplier of such exempt substances. The certificate may be revoked by the commissioner at any time upon a finding that the conditions precedent to the exemption no longer exist. His action as to the granting

or revoking of a certificate shall be reviewable solely by a petition for common law certiorari addressed to the chancery court of Davidson County.

(4) Any water or energy fuel used by a manufacturer in fabricating processing tangible personal property for resale shall be exempt entirely from the taxes imposed by this chapter when same are produced or extracted by the manufacturer himself from facilities owned by him or in the public domain. [Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1980 (Adj. S.), ch. 871, § 1; 1982 (Adj. S.), ch. 610, § 1; 1982 (Adj. S.), ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), §67-3003(g).]

67-6-207. *Farm equipment and machinery.*—Notwithstanding other provisions of this chapter, tax imposed with respect to farm equipment and machinery as defined in § 67-6-102 shall be at the following rate:

- (1) July 1, 1980—June 30, 1981— .75% ;
- (2) July 1, 1981—June 30, 1982— .50% ;
- (3) July 1, 1982—June 30, 1983— .25% ; and

(4) On and after July 1, 1983, no tax is due with respect to farm equipment and machinery. [Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2;

1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1980 (Adj. S.), ch. 871, § 2; 1982 (Adj. S.), ch. 610, § 1; 1982 (Adj. S.), ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(h).]

67-6-208. *Fuels for residential use.*—(a) Tax at the rate of one and one-half percent (1½%) shall be imposed with respect to gas, electricity, fuel oil, coal and other energy fuels sold directly to the consumer for residential use.

(b)(1) For the purpose of this section “sold directly to the consumer for residential use” shall include the furnishing of gas, electricity, fuel oil, coal or other energy fuels to single private residences, including the separate private units of apartment houses and other multiple dwellings, actually used for residential purposes, which are separately metered or measured, irrespective of the fact that a person other than the resident:

(A) Is contractually bound to the supplier for the charges;

(B) Actually pays the charges; or

(C) Is billed for the charges.

(2) The definition of “sold directly to the consumer for residential use” shall be retroactive to April 1, 1976, and shall apply to all sales of gas, electricity, fuel oil, coal and other energy fuels sold directly to the consumer for residential use on or after April 1, 1976.

(c) The one and one-half percent (1½%) rate shall continue to apply when residential use is discontinued for

a period of sixty (60) days or less. If residential use is not resumed within such sixty (60) day period, the sale of electricity and other energy fuels after such period shall be taxed at the rate provided in 67-2-202.

(d) Use of electricity and other energy fuels in hotel or motel units by transient occupants shall not constitute residential use. [Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1982 (Adj. S.), ch. 610, § 1; 1982 (Adj. S.), ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(i).]

67-6-209. *Use of property produced or severed from earth—Exemptions.*—(a) Where a manufacturer, producer, compounder or contractor erects or applies tangible personal property, which he has manufactured, produced, compounded or severed from the earth, other than:

(1) Any severed from the earth and moved from one (1) place to another on the same construction or job site; and

(2) Dirt, soil, earth or any other kind of material when used for fill, whether from the same construction or job site or elsewhere, such person so using the tangible personal property shall pay the tax herein levied on the fair market value of such tangible personal property when used, without any deductions whatsoever, provided, however, the foregoing shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property which becomes a component

part of a building, and which is not sold by them as a manufactured item.

(b) Where a contractor or subcontractor herein-after defined as a dealer uses tangible personal property in the performance of his contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church and the tangible personal property is for church construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid.

(c)—The tax imposed by this section shall have no application where the contractor or subcontractor, and the purpose for which such tangible personal property is used, would be exempt from the sales or use tax under any other provision of this chapter.

(d) The tax imposed by this section or by any other provision of this chapter, as amended shall have no application with respect to the use by, or the sale to, a contractor or subcontractor of atomic weapon parts, source materials, special nuclear materials and by-product materials, all as defined by the Atomic Energy Act of 1954, or with respect to such other materials as would be excluded from taxation as industrial materials under § 67-6-102(13)(E) when the items referred to in this subsection are sold or leased to a contractor or subcontractor for use in, or experimental work in connection with, the manu-

facturing processes for on or behalf of the atomic energy commission or when any of such items are used by a contractor or subcontractor in such experimental work or manufacturing processes.

(e) There is hereby exempted from the provisions of this chapter, the sale or use of materials and equipment purchased or used for construction or installation, by a contractor, subcontractor or otherwise, of, in or as a part of any electric generating plant or distribution system, any resource recovery facility where steam or electric energy is produced, or any coal gasification plant or distribution system owned or operated by the United States or any agency thereof created by an act of congress, or by the state of Tennessee or any agency or political subdivision thereof, or any authority organized pursuant to the state electric membership corporation law, compiled in chapter 24 of title 65, or the electric cooperative law, compiled in chapter 25 of title 65. There is also exempted the sale or use of materials and equipment purchased or used for construction or installation by a contractor, subcontractor or otherwise, of, in or as a part of any electric generating plant, including the transmission substation, owned or operated by any person so long as such person does not now or intend in the future to generate electricity from a plant located in Tennessee or to distribute electricity to consumers in Tennessee. [Acts 1949, ch. 245, § 1; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 242, § 7; 1957, ch. 166, § 1; 1963, ch. 38, § 6; 1963, ch. 174, § 1; 1978 (Adj. S.), ch. 536, § 1; 1978 (Adj. S.), ch. 601, § 1; 1980 (Adj. S.), ch. 563, § 1; 1980 (Adj. S.), ch. 812, § 1; T.C.A. (orig. ed.), §67-3004(a)-(e).]

67-6-210. *Use of property imported by dealer—Exemptions.*—(a) On all tangible personal property imported, or caused to be imported from other states or foreign country, and used by him, the “dealer” as defined in § 67-6-102(4), shall pay the tax imposed by this chapter on all articles of tangible personal property so imported and used, the same as if the articles had been sold at retail for use or consumption in this state. For the purposes of this chapter, the use, or consumption, or distribution, or storage to be used or consumed in this state of tangible personal property shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event.

(b) It is not the intention of this section to levy the use tax with respect to the personal automobile, the personal effects, or the household furniture to be used in the residence of a person who, having been a bona fide resident of another state, has moved to and become a resident of Tennessee, and has caused to be imported into Tennessee such personal automobile, personal effects, or household furnishing. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.55 (Williams, § 1328.25); Acts 1967, ch. 117, § 1; T.C.A. (orig. ed.), § 67-3005.]

67-6-211. *Property no longer in interstate commerce.*—It is the intention of this chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.56 (Williams, § 1328.25); T.C.A. (orig. ed.), § 67-3007.]

PART 3—EXEMPTIONS

67-6-301. *Agricultural products.*—(a) The gross proceeds derived from the sale in this state of livestock, nursery stock, poultry and other farm or nursery products, in any calendar year, directly from a farmer or nurseryman, are exempted from the tax levied by this chapter if fifty percent (50%) or more of such products are grown and produced in the calendar year by such farmer or nurseryman. If less than fifty percent (50%) of such products in any calendar year are grown or produced by the farmer or nurseryman, then only the gross proceeds of the sale in this state of the products actually grown or produced by such farmer or nurseryman shall be exempt from the tax levied by this chapter. When sales of livestock, nursery stock, poultry, or other farm or nursery products are made to consumers, other than as provided herein, they are not exempted from the tax imposed by this chapter.

(b) It is specifically provided that the “use tax” as defined herein shall not apply to livestock and livestock products, to poultry and poultry products, to farm, nursery and agricultural products, when produced by the farmer or nurseryman and used by him and members of his family.

(c)(1) Provided, however, that each and every agricultural commodity sold by any person, other than a producer, to any other person, who purchases not for direct consumption but for the purpose of acquiring raw products for use or for sale in the process of preparing, finishing, or manufacturing such agricultural commodity for the ultimate retail consumer trade shall be and is ex-

empted from any and all provisions of this chapter, including payment of the tax applicable to the sale, storage, use, transfer, or any other utilization or handling thereof, except when such agricultural commodity is actually sold as a marketable or finished product to the ultimate consumer, and in no case shall more than one (1) tax be exacted.

(2) "Agricultural commodity," for the purposes of this section, means horticultural, poultry, and farm products, and livestock and livestock products. [Acts 1947, ch. 3, § 5; C. Supp. 1950, § 1248.60 (Williams, § 1328.26); Acts 1978 (Adj. S.), ch. 921, §§ 2, 3; 1983, ch. 162, § 1; T.C.A. (orig. ed.), § 67-3011.]

67-6-302. *Aircraft parts and supplies.*—There shall be exempt from sales or use tax, use, storage or consumption of parts, accessories, materials and supplies sold to or used by commercial interstate or international air carriers for use exclusively in servicing and maintaining such carriers' aircraft, which aircraft are used principally in interstate or international commerce. This exemption shall not apply to fuel and other petroleum products or to shop equipment and tools. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1;

1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-303. *Armed forces—Automobiles.*—There shall be exempted from the tax imposed by this chapter any sale of a motor vehicle to a nonresident member of a uniformed service, as defined in the Internal Revenue Code of 1954, stationed under orders of his branch of service on a military reservation located partially within the boundary of Tennessee and that of another state. Dealers shall support each such sale by attachment to their file copy of the invoice evidencing it a copy of the official orders relating to stationing of the purchaser and proof of nonresidency. This exemption shall terminate upon publication in the Tennessee administrative register of a certification made by the commissioner of revenue to the secretary of state that a substantially identical exemption is no longer accorded by the other state whose boundary encompasses the other portion of a military reservation located only partially within the boundary of this state. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194,

§ 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012].

67-6-304. *Blood and plasma*.—There shall be exempt from the tax imposed by this chapter the sale of human blood, blood plasma, or any part thereof by any institution or organization which has received a determination of exemption from the Internal Revenue Service under § 501 (c)(3) of the Internal Revenue Code. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2,

§ 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-305. *Demonstration property*.—There shall be exempt from sales or use tax the transfer, by any dealer in personal property, of any item from inventory to be used for demonstration purposes; provided that such article of personal property shall be returned to inventory for sale in the usual course of trade within one hundred twenty (120) days; if such article of personal property is used for demonstration purposes for a period in excess of one hundred twenty (120) days, the dealer shall pay a use tax thereon for the amount that the cost of the article to the dealer exceeds the sales price of the article upon which sales tax is regularly assessed and paid when it is subsequently sold to a consumer. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955,

ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976, (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-306. *Divorce—Transfer of automobile.*—There shall be exempt from sales and use tax the transfer between spouses of an automobile when such transfer is the result of a decree of divorce terminating that marriage. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1;

1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-307. *Energy or resource recovery facilities.*— There shall be excluded from the sales and use tax base that portion of the consideration, received from the sale of steam produced by an energy or resource recovery facility owned or operated by a municipality, which is used to satisfy an indebtedness to the state incurred pursuant to §§ 68-31-401—68-31-416. This exclusion shall only apply if the facility has no more than one customer, and the portion of the consideration subject to the exclusion is separately stated on each billing. In the event ownership of the facility is transferred to the facility's sole customer, that portion of the consideration previously excluded from taxation shall be taxable to the customer. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch.

32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-308. *Federal government.* — Notwithstanding § 67-6-501(a), no sales or use tax shall be payable on account of any direct sale or lease of tangible personal property or services to the United States, or any agency thereof created by congress, for consumption or use directly by it through its own government employees. [Acts 1949, ch. 245, § 1; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 242, § 7; 1957, ch. 166, § 1; 1963, ch. 38, § 6; 1963, ch. 174, § 1; 1978 (Adj. S.), ch. 536, § 1; 1978 (Adj. S.), ch. 601, § 1; 1980 (Adj. S.), ch. 563, § 1; 1980 (Adj. S.), ch. 812, § 1; T.C.A. (orig. ed.), § 67-3004(f).]

67-6-309. *Film and transcription rentals.*—There shall be exempted from the tax imposed by this chapter all rental from films to theaters which pay the privilege tax of one

percent (1%) of their gross receipts, as provided by § 67-4-408. There shall also be exempt from the provisions of this chapter all rental for films, transcriptions and recordings to radio stations and television stations operating under a certificate from the federal communications commission. [Acts 1951, ch. 172, § 1; 1953, ch. 128, § 1; (Williams, § 1328.27); modified; T.C.A. (orig. ed.), § 67-3013.]

67-6-310. *Gun shows—Sales by nonprofit organizations.*—There shall be exempt from the sales and use tax the proceeds derived from sales at gun shows, displays or exhibits, sponsored by any nonprofit organization of gun collectors. This exemption shall not be applicable to any sale made by a person who regularly engages in business as a dealer in guns, or to any sale of a gun for future delivery. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.),

ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed. § 67-3012.)

67-6-311. *Industrial machinery transferred between parent and subsidiary corporations.*—There shall be exempt from the tax imposed by this chapter the sale, transfer, or lease of industrial machinery, as that term is defined in § 67-6-102, to or from a parent corporation and a wholly owned subsidiary to the extent that such Tennessee sales and use tax applicable to such machinery has previously been paid by such parent or subsidiary corporations. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982

(Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-312. *Insulin*.—There shall be exempt from sales and use tax the sale, at retail, of insulin and any syringe used to dispense insulin. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-313. *Interstate commerce*.—It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export; nor is it the intention of this chapter to levy a tax on bona fide interstate

commerce. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.56 (Williams, § 1328.25); T.C.A. (orig. ed.), § 67-3007.]

67-6-314. *Medical equipment and devices for-handicapped persons*—There shall be exempt from the sales tax imposed by this chapter:

(1) The transfer of an artificial limb to a person who has need for such artificial limb due to his loss of an arm or leg or any part thereof and the retail sale of lift devices designed to permit ingress and egress of handicapped persons confined to wheelchairs from their personal motor vehicles;

(2) The sale of any item necessary for the use or wearing of any artificial limb;

(3) The sale of a wheelchair to a handicapped person ~~who has need~~ for such device;

(4) The sale of, to handicapped persons who personally use such items, any necessary maintenance service on any artificial limb, lift device, or wheelchair; and

(5) The sale of prosthetics, orthotics, special molded orthopedic shoes, walkers, crutches, surgical supports of all kinds, and other similarly medical corrective or support appliances and devices. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976

(Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 489, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 238, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-315. *Motor vehicles moved outside state.*—There shall be exempt from the sales tax the retail sale of motor vehicles subject to registration and titling in this state pursuant to § 55-3-101, that are not registered and titled in this state but are removed for use in another state within three (3) calendar days of purchase. Use of such motor vehicles within this state subsequent to purchase, but prior to removal from the state, shall not constitute a use subject to tax. For the purposes of this section, vehicles subject to registration and titling in this state pursuant to § 55-3-101 shall be deemed to include all off-highway motor vehicles as defined in § 55-3-1-1(c)(2) purchased on or after April 13, 1981. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1;

1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-316. *Optometrists, opticians, and ophthalmologists.*—An optometrist, optician or ophthalmologist shall be considered the user and consumer of the tangible personal property used in the practice of his profession, and the tax levied under this chapter shall not be applicable to all or any part of the charge made by such persons to their patients. All sales of tangible personal property and taxable services to an optometrist, optician or ophthalmologist shall be subject to the sales or use tax. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 61, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258,

§ 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-317. *Ostomy products*.—There shall be exempt from the tax imposed by this chapter the sale of ostomy products or appliances for use by persons who have had colostomies, ileostomies, or urostomies. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1;

impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-318. *Oxygen*.—There shall be exempt from the tax imposed by this chapter any sales of oxygen prescribed or recommended for the medical treatment of a human being by a licensed practitioner of the healing arts, and equipment necessary to administer such oxygen. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391,

§§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-319. *Pharmaceutical samples.*—There shall be exempt from the sales and use tax samples produced by a pharmaceutical plant within the state for future distribution outside of the state or temporarily stored by such pharmaceutical plant within the state for future distribution outside of the state. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 193, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-320. *Prescription drugs.*—(a) There shall be exempt from the tax imposed by this chapter any prescription drug or medicine issued by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state of Tennessee.

(b) There shall also be exempt from the tax imposed by this chapter any prescribed drug or medicine sold to a practitioner of the healing arts licensed by the state of Tennessee or issued by a licensed pharmacist for use in the treatment of a human being. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-321. *Railroad stock — Vessels and barges.*—

There shall be exempt from sales tax the transfer, by any dealer in personal property, of railroad rolling stock or of vessels or barges of fifty (50) tons or over of displacement where the purchaser gives the seller an affidavit that such vessels or rolling stock are being purchased for use in interstate commerce or outside the state of Tennessee; and any such vessel or rolling stock shall also be exempt from use tax so long as it is being used in interstate commerce. [Acts 1947, ch. 3 § 6; 1949, ch. 245, § 2; C. Supp. 1950 § 1248.61. (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70 § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-322. *Religious, educational, and charitable institutions.*—

(a) There shall be exempt from the provisions

of this chapter any sales or use tax upon tangible personal property or taxable services sold, given, or donated to any:

- (1) Church;
- (2) University, including the Agricultural Foundation for Tennessee Tech. Inc.;
- (3) College;
- (4) School;
- (5) Orphanage;
- (6) Institution organized for the principal purpose of placing homeless children in foster homes;
- (7) Home for the aged;
- (8) Hospital;
- (9) Girls' club;
- (10) Boys' club;
- (11) Community health council;
- (12) Volunteer fire department;
- (13) Organ bank for transplantable tissue;
- (14) Organization whose primary objective is to promote the spiritual and recreational environment of members of the armed services of the United States of America, such as the United Service Organization as it is presently conducted;
- (15) Historical property owned by the state and operated by the historical commission or under the jurisdiction of the commission as authorized by § 4-11-108;
- (16) Nonprofit community blood banks;

(17) Senior citizen service centers which meet the standards set by the Tennessee commission on aging for eligibility to receive state funds; or

(18) Nonprofit corporation whose primary function involves the annual organization, promotion, and sponsorship of a statewide talent and beauty pageant in which contestants compete for scholarships, awarded by such nonprofit corporation, as well as for the opportunity of being Tennessee's representative and contestant in an annual nationwide talent and beauty pageant with which such nonprofit corporation is affiliated.

(b) In addition to the exempt institutions, organizations and historical properties described in subsection (a) there shall also be exempt such other institutions and organizations which have received a determination of exemption from the Internal Revenue Service under § 501(c)(3) (26 U.S.C. § 501(c)(3)) of the Internal Revenue Code and are currently operating under it.

(c) Any exemption granted under subsection (a) or (b) shall be limited to such institutions, organizations or historical properties which are not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) Any exemption granted under the preceding subsections shall only apply to sales, gifts, or donations made directly to the exempt institution, organization or historical property. There shall be no exemption upon sales, gifts, or donations made to an independent contractor with any such exempt institution, organization or historical property.

(e) No dealer shall sell, give, or donate and no user shall use any tangible personal property under the claim that the same is exempt from the sales or use tax levied by this chapter, where the exemption from taxation is claimed because the vendee or user is an educational, religious or charitable institution or organization or historical property and is entitled to an exemption as such institution or organization or historical property under subsections (a)-(d), unless the vendee or user shall have issued to it by the commissioner an exemption certificate declaring that such institution or organization or historical property is entitled to the exemption provided for by subsections (a)-(d).

(f) The commissioner is authorized to make final determination after hearing, if demanded, as to whether any institution or organization or historical property is entitled to the benefit of the exemption established by subsections (a)-(d). The commissioner is authorized to issue exemption certificates to institutions and organizations and historical properties which, in his judgment, are entitled thereto. [Acts 1949, ch. 110, § 1; 1949, ch. 237, § 1; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1967, ch. 364, § 1; 1967, ch. 369, § 1; 1968 (Adj. S.), ch. 531, § 1; 1973, ch. 263, § 1; 1975, ch. 125, § 1; 1975, ch. 27, §§ 1, 2; 1975, ch. 290, § 1; 1976 (Adj. S.), ch. 619, § 1; 1976 (Adj. S.), ch. 684, § 1; 1976 (Adj. S.), ch. 791, § 1; 1977, ch. 97, §§ 1, 2; 1977, ch. 126, § 1; 1979, ch. 63, §§ 1-4; 1979, ch. 168, § 1; T.C.A. (orig. ed.), § 67-3014.]

67-6-323. *Religious publications.*—The taxes levied under this chapter shall not apply to the use, sale, or distribution of religious publications to or by churches or other religious or charitable institutions for use in the customary

religious or charitable activities. [Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.59 (Williams, § 1328.25); T.C.A. (orig. ed.), § 67-3010.]

67-6-324. *Replacement parts or goods.*—There shall be exempt from sales tax any replacement parts or goods transferred without cost to a purchaser for the replacement of faulty parts or equipment which prior thereto had been sold under a warranty or guarantee or condition and upon which original purchase or importation a sales or use tax was paid. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § T.C.A. (orig. ed.), 67-3012.]

67-6-325. *Telephone cooperatives*.—There shall be exempt from the provisions of this chapter all sales of tangible personal property to telephone cooperatives organized under the general welfare laws of this state. This exemption shall apply only to sales of tangible personal property to telephone cooperatives for their own use and consumption, and shall not apply to any purchases made by the telephone cooperatives for use by independent contractors. This section shall apply only so long as electric membership corporations organized under the electric membership corporation law, compiled in chapter 24 of title 65, and electric cooperatives organized under the electric cooperative law, compiled in chapter 25 of title 65, shall be entitled to an exemption from the payment of any sales and use tax. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982

(Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-326. *Vessels*.—There shall be exempted from the taxes imposed by this chapter all sales of tangible personal property to commercial marine vessels for use by such vessels where the deliveries of such property are made in mid-stream of waterways constituting geographical boundaries of this state. Dealers shall, however, be required to support such sales by bills of sale positively reflecting such delivery receipted by the master of the deliverer vessel. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-327. *Vessels and barges—Repairs.*—There shall be exempt from the tax imposed by this chapter, repair services performed on vessels and barges of fifty (50) tons and over load displacement, which are used principally in interstate or international commerce, and the parts, accessories, materials and supplies used in such repairs where the parts, accessories, materials and supplies become component parts of such vessels and barges. For purposes of this section, repair services shall include renovations and improvements to such vessels and barges. This exemption shall not apply to fuel and other petroleum products or to shop equipment and tools. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; ch. 102, § 3;

1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-328. *Watershed districts.*—There shall be exempt from sales or use tax all sales of tangible personal property to watershed districts for use and consumption by such districts. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27) Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963 ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

67-6-329. *Miscellaneous exemptions.*—The sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter.

(1) Gasoline as defined by statute in Tennessee, upon which a privilege tax per gallon is paid, and not re-

funded, or gasoline or diesel fuel used for "agricultural purposes" as this term is defined in § 67-3-202. For purposes of this subsection "diesel fuel" means any petroleum distillate with at least twelve (12) to sixteen (16) carbon atoms per molecule and which has a boiling point of between three hundred fifty degrees (350°) and six hundred fifty degrees (650°) F. or any petroleum distillate which is ordinarily and customarily sold and used as a source of fuel for diesel engines;

(2) Motor vehicle fuel now taxed per gallon by part 8, chapter 3 of this title;

(3) Newspapers;

(4) Seedlings, plants grown from seed or liners (cuttings) when sold to a farmer and nurseryman;

(5) Fertilizer and containers used for farm products and field and garden seeds when sold directly to the farmer and nurseryman.

(6) Insecticide and pesticide chemicals when sold directly to and used by the farmer and nurseryman;

(7) Fungicide chemicals when sold directly and used by the farmer and nurseryman;

(8) Herbicide chemicals when sold directly to the farmer and nurseryman used to destroy or prevent the growth of weeds and bushes;

(9) Livestock and poultry feeds;

(10) Shoppers' advertisers using newsprint distributed in Tennessee or within a twenty-five (25) mile radius thereof at regular intervals and provided without charge to the shopper;

(11) Caskets and burial vaults used in the burial of the dead, up to or not to exceed five hundred dollars (\$500);

(12) School books and school lunches;

(13) All sales made to the state of Tennessee or any county or municipality within the state;

(14) Hearing aids, as this term is defined in § 63-15-102;

(15) Surfactants sold directly to a farmer or nurseryman for use as solutions to be mixed with insecticides, pesticides, fungicides, or herbicides;

(16) Adjuvants sold directly to a farmer or nurseryman for use as a soil conditioner; and

(17) Plastic used in the care and raising of plants when sold directly to or used by the farmer or nurseryman. [Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976 (Adj. S.), ch. 466, § 2; 1976 (Adj. S.), ch. 524, § 1; 1976 (Adj. S.), ch. 689, § 1; 1976 (Adj. S.), ch. 711, § 1; 1976 (Adj. S.), ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978 (Adj. S.), ch. 732, § 1; 1978 (Adj. S.), ch. 733, § 1; impl. am. Acts 1978 (Adj. S.), ch. 761, § 116; 1978 (Adj. S.), ch. 793, § 1; 1978 (Adj. S.), ch. 831, § 1; 1978 (Adj. S.), ch. 832, § 1; 1978 (Adj. S.), ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330,

§ 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980 (Adj. S.), ch. 613, § 1; 1980 (Adj. S.), ch. 748, § 1; 1980 (Adj. S.), ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982 (Adj. S.), ch. 576, § 1; 1982 (Adj. S.), ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012.]

PART 4—ADMINISTRATIVE PROVISIONS

67-6-401. *Administration by commissioner.*—The commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter. [Acts 1947, ch. 3, § 14; C. Supp. 1950, § 1248.86 (Williams, § 1328.36); T.C.A. (orig. ed.), § 67-3046.]

67-6-402. *Rules and regulations.*—(a) The commissioner shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter or the other laws, or the Constitution of this state or the United States, for the enforcement of the provisions of this chapter and the collection of revenues hereunder.

(b) The commissioner is authorized to make and publish such rules and regulations not inconsistent with this chapter as he may deem necessary in enforcing its provisions in order that there shall not be collected on the average more than the rate levied herein. The commissioner is authorized to and he shall provide by rule and regulation a method for accomplishing this end, and he shall prepare instructions to dealers by setting out to them suitable brackets of prices for applying the tax or any other method that may be necessary for the purpose of the enforcement of this chapter and the collection of the tax imposed thereby. [Acts 1947, ch. 3, §§ 13, 14; C. Supp.

1950, §§ 1248.85, 1248.86 (Williams, §§ 1328.35, 1328.36); T.C.A. (orig. ed.), §§ 67-3045, 67-3046.]

67-6-403. *Forms.*—(a) The commissioner shall design, prepare, print and furnish to all dealers, or make available to the dealers, all necessary forms for filing returns and instructions to insure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to secure such forms shall not relieve such dealer from the payment of the tax at the time and in the manner herein provided.

(b) The cost of preparing and distributing the reports, forms, and paraphernalia for the collection of the tax and the inspection and enforcement duties required herein shall be borne by the revenues produced by this chapter, provisions for which are hereinafter made. [Acts 1947, ch. 3, §§ 13, 14; C. Supp. 1950, §§ 1248.83, 1248.86 (Williams, §§ 1328.35, 1328.36); T.C.A. (orig. ed.), §§ 67-3043, 67-3046.]

67-6-404. *Oaths.*—The commissioner and his assistants are authorized and empowered to administer the oath for the purpose of enforcing and administering the provisions of this chapter. [Acts 1947, ch. 3, § 13; C. Supp. 1950, § 1248.84 (Williams, § 1328.35); T.C.A. (orig. ed.), § 67-3044.]

67-6-405. *Personnel, supplies, and expenses.*—(a) The commissioner with the approval of the governor is authorized to employ all necessary assistance to administer this chapter properly and is also authorized to purchase all necessary supplies and equipment and to incur any other necessary expenses which may be required for this pur-

pose, in order to put the chapter fully and completely into effect.

(b) All necessary expenses of employees to administer this chapter shall be paid in the manner provided by law applicable to expenses of other state officials and employees. [Acts 1947, ch. 3, §§ 14, 17; mod. C. Supp. 1950, §§ 1248.86, 1248.89 (Williams, §§ 1328.36, 1328.39); Acts 1971, ch. 117, § 6; 1976 (Adj. S.), ch. 789, § 1; T.C.A. (orig. ed.) §§ 67-3046, 67-3048.]

67-6-406. *Duties of state and local officials.*—The commissioner is authorized to require the assistance of any official of the state or of any political subdivision thereof in the administration of this chapter and it shall be unlawful for any official of this state or of any political subdivision thereof to accept an application for a certificate of title to a motor vehicle as provided for in chapters 1 through 6 of title 55 or for a certificate of registration for a vessel as provided for in chapter 10 of title 69 unless the applicant shall present evidence that a sales or use tax, as provided for in this chapter, has been paid on the sales price of the vehicle or vessel by such applicant or such applicant has authority from the commissioner of revenue to file an application for such certificate of title or registration without the payment of the sales or use tax. It shall also be unlawful for any official referred to herein to accept an application for a certificate of title to a motor vehicle when the sale of such vehicle constitutes an occasional and isolated sale which is taxable under § 67-6-102 (1) unless the applicant presents a bill of sale which evidences the sale price and also presents evidence that the sales or use tax has been paid on that amount, or in the

absence of such a bill of sale, unless the official requires evidence of payment of the sales or use tax on the fair market value of the vehicle as the same is determined by him by reference to the most recent issue of an authoritative automotive pricing manual, such as the N.A.D.A. Official Used Car Guide, Southeastern Edition. [Acts 1947, ch. 3, § 17; mod. C. Supp. 1950, § 1248.89 (Williams, § 1328.39); Acts 1971, ch. 117, § 6; 1976 (Adj. S.), ch. 789, § 1; T.C.A. (orig. ed.), § 67-3048.]

PART 5—COLLECTION AND ENFORCEMENT GENERALLY

67-6-501. *Tax collected from dealer.*—(a) Every dealer making sales, whether within or outside the state, of tangible personal property, for distribution, storage, use, or other consumption in this state, or furnishing any of the things or services taxable under this chapter, shall be liable for the tax imposed by this chapter.

(b) The tax shall be collected from the dealer as defined herein and paid at the time and in the manner as hereinafter provided.

(c) The aforesaid tax at the rate provided by law of the retail sales price, as of the moment of sale, or of the cost price, as of the moment of purchase, as the case may be, shall be collectible from all persons, as defined in § 67-6-102, engaged as dealers, as defined in § 67-6-102, in the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of tangible personal property, or in the furnishing of any of the things or services taxable under this chapter. [Acts 1947, ch. 3, §§ 3, 4; C. Supp. 1950, §§ 1248.52-1248.54 (Williams, §§ 1328.24, 1328.25); Acts 1955, ch. 51, §§ 7-9, 11;

1955, ch. 242, § 6; 1957, ch. 307, § 1; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1969, ch. 3, § 1; 1971, ch. 78, § 1; 1971, ch. 117, §§ 2, 3; 1972 (Adj. S.), ch. 653, § 1; 1973, ch. 239, § 1; 1974 (Adj. S.), ch. 675, § 1; 1975, ch. 316, § 1; 1976 (Adj. S.), ch. 466, §§ 1, 3; 1982 (Adj. S.), ch. 610, § 1; 1982 (Adj. S.), ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), §§ 67-3003, 67-3016, 67-3018.]

67-6-502. *Tax paid by consumer.*—The tax imposed by this chapter shall be collected by the retailer from the consumer insofar as it can be done [Acts 1947, ch. 3, § 5; C. Supp. 1950, § 1248.60 (Williams, § 1328.26); Acts 1955, ch. 51, § 7; 1957, ch. 307, § 2; 1963, ch. 89, § 1; 1969, ch. 3, § 3; 1970 (Adj. S.), ch. 402, § 1; 1971, ch. 117, § 4; T.C.A. (orig. ed.), § 67-3020.]

67-6-503. *Retailer to display price and tax separately.*—The commissioner may by regulation provide that the amount collected by the retailer from the consumer in reimbursement of the tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sale check or other proof of sale. [Acts 1947, ch. 3, § 5; C. Supp. 1950, § 1248.60 (Williams, § 1328.26); Acts 1955, ch. 51, § 7; 1957, ch. 307, § 2; 1963, ch. 89, § 1; 1969, ch. 3, § 3; 1970 (Adj. S.), ch. 402, § 1; 1971, ch. 117, § 4; T.C.A. (orig. ed.), § 67-3020.]

67-6-504. *Returns and payment.*—(a) The taxes levied under this chapter shall be due and payable monthly on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this chapter it shall be the duty of all dealers on or before the 20th day

of each month to transmit to the commissioner, upon forms prescribed, prepared and furnished by him, returns, showing the gross sales, or purchases, as the case may be, arising from all sales or purchases taxable under this chapter during the preceding calendar month.

(b) At the time of transmitting the return required hereunder to the commissioner, the dealer shall remit to him therewith the amount of tax due under the applicable provisions of this chapter and failure to so remit such tax shall cause the tax to become delinquent.

(c) Gross proceeds from rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the commissioner may prescribe.

(d) Gross proceeds from the furnishing of things or services taxable under this chapter shall be reported and the tax shall be paid with respect thereto in the same manner as gross proceeds from the sale, rental or lease of tangible personal property and in accordance with such rules and regulations as the commissioner may prescribe. [Acts 1947, ch. 3, §§ 8, 10; C. Supp. 1950 §§ 1248.64, 1248.75 (Williams, §§ 1328.30, 1328.32); modified; Acts 1955, ch. 51, § 12; T.C.A. (orig. ed.), §§ 67-3022-67-3024.]

67-6-505. *Alternative filing and payment dates.*—The commissioner is specifically authorized to establish by regulation periodic filing and payment dates other than monthly in those instances where he deems it to be in the best interests of the state to do so; provided, however, that in such cases where the average monthly liability is or is indicated to be more than one hundred dollars (\$100), the

commissioner shall require advance deposits in such amount as he deems necessary to protect the state's interests. [Acts 1947, ch. 3, § 8; 1949, ch. 245, § 3; C. Supp. 1950, § 1248.66 (Williams, § 1328.30); Acts 1965, ch. 4, § 1; 1969, ch. 164, §§ 1, 2; 1970 (Adj. S.), ch. 360, § 1; 1977, ch. 64, § 1; 1980 (Adj. S.), ch. 885, § 13; 1983, ch. 238, §§ 1, 2; T.C.A. (orig. ed.), § 67-3026.]

67-6-506. *Extensions.*—The commissioner, under emergency or other extraordinary conditions, may extend for not to exceed thirty (30) days the time for making any returns required under the provisions of this chapter. There shall, however, be added to the amount of tax due, interest, as provided by § 67-1-801, from the regular statutory delinquency date until the date paid. No penalty will be assessed when the return is made and the full amount of taxes paid on or before the extended delinquency date. Any return and payment made subsequent to the extended delinquency date shall, however, be subject to penalty and any other late charges without regard to the period allowed by the extension. [Acts 1947, ch. 3, § 8; 1949, ch. 245, § 3; C. Supp. 1950, § 1248.66 (Williams, § 1328.30); Acts 1965, ch. 4, § 1; 1969, ch. 164, §§ 1, 2; 1970 (Adj. S.), ch. 360, § 1; 1977, ch. 64, § 1; 1980 (Adj. S.), ch. 885, § 13; 1983, ch. 238, §§ 1, 2; T.C.A. (orig. ed.), § 67-3026.]

67-6-507. *Credits to dealer.*—(a) The provisions of this chapter shall not apply in respect to the use or consumption, or distribution, or storage of tangible personal property for use or consumption in this state upon which a like tax equal to or greater than the amount imposed by this chapter has been paid in another state, the proof of payment of such tax to be according to rules and regula-

tions made by the commissioner. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by this chapter, then the dealer shall pay to the commissioner an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by this chapter.

(b) If the dealer can show by reasonable proof that he has paid any Tennessee sales or use tax to a vendor on personal property or taxable service which such dealer has subsequently sold without collecting tax on the resale of the personal property or taxable service, then the dealer shall be given credit for any such payment in computing any liability to the department of revenue for sales or use tax. Reasonable proof can be supplied by invoices and other records which the dealer may obtain from the vendors from which he has made purchases.

(c) In the event purchases are returned to the dealer by the purchaser or consumer after the tax imposed by this chapter has been collected, or charged to the account of the consumer or user, or if the dealer actually refunds the purchase price and the sales tax thereon, to the purchaser or consumer for any other reason, the dealer shall be entitled to reimbursement of the amount of tax so collected or charged by him, in the manner prescribed by the commissioner; and in case the tax has not been remitted by the dealer to the commissioner, the dealer may deduct the same in submitting his return upon receipt of a signed statement of the dealer as to the gross amount of such refunds during the period covered by said signed statement, which period shall not be longer than ninety (90) days.

(d) In the event a dealer shall sell any article of personal property on a security agreement or other title retained instrument and the dealer shall thereafter be required to repossess or enforce his lien on the article of personal property at a time when the balance due on the unpaid purchase price shall exceed five hundred dollars (\$500), the dealer shall be entitled to a credit on the sales tax which he shall be required to collect and remit to the commissioner in an amount equal to the difference between the amount of the sales tax collected and paid at the time of the original purchase and the amount of sales tax which would be owed on that portion of the purchase price which has actually been paid by the purchaser, plus the sales tax on the first five hundred dollars (\$500) of the unpaid balance of the purchase price. The commissioner shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected. Such memorandum shall be accepted by the commissioner at full face value from the dealer to whom it is issued, in the remittance for subsequent taxes accrued under the provisions of this chapter, provided that in cases where a dealer has retired from business and has filed a final return, a refund of tax may be made if it can be established to the satisfaction of the commissioner that the tax was not due.

(e) A dealer who has paid the tax imposed by this chapter on any sale as defined in § 67-6-102 may take credit in any return filed under the provisions of this chapter for the tax paid by him on the unpaid balance due on accounts which during the period covered by the current return have been found to be worthless and are actually charged off for federal income tax purposes, provided,

that if any accounts so charged off are thereafter in whole or in part paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly. [Acts 1947, ch. 3, §§ 4, 8, 13; C. Supp. 1950, §§ 1248.57, 1248.67, 1248.82 (Williams, §§ 1328.25, 1328.30, 1328.35); Acts 1957, ch. 63, § 1; 1965, ch. 285, § 1; 1965, ch. 358, § 1; 1967, ch. 117, § 2; 1974 (Adj. S.), ch. 798, § 1; 1983, ch. 46, § 1; T.C.A. (orig. ed.), §§ 67-3008, 67-3028; 67-3029.]

67-6-508. Credits to purchaser.—The most recent bona fide purchaser for value of a motor vehicle that is seized by an authorized law enforcement official under the provisions of part 1, chapter 5 of title 55, or any other similar provision of law respecting stolen motor vehicles, shall if such vehicle is not ultimately returned to the purchaser, be entitled to a full refund of any Tennessee use tax, if the purchaser paid such tax to the appropriate governmental official pursuant to § 55-3-105. Any claim for refund under this section shall be filed with the commissioner, together with satisfactory proof that the use tax has been properly paid to the commissioner, in the manner provided in § 67-1-707. [Acts 1983, ch. 46, § 1; T.C.A. § 67-3028.]

67-6-509. Deduction for dealer's accounting costs.—
(a) For the purpose of compensating the dealer in accounting for and remitting the tax, a dealer shall be allowed a deduction of tax due, reported, and paid to the department as follows:

(1) Two percent (2%) of the first two thousand dollars (\$2,000) on each report; and

(2) One and one-half percent ($1\frac{1}{2}\%$) of amounts over two thousand dollars (\$2,000) on each report.

(b) Beginning July 1, 1985, and thereafter, for the purpose of compensating the dealer in accounting for and remitting the tax levied by this chapter, a dealer shall be allowed a deduction of tax due, reported, and paid to the department of two percent (2%) on each report.

(c) No deduction from tax shall be allowed if any such report or payment of tax is delinquent. [Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.65 (Williams, § 1328.30; Acts 1980 (Adj. S.), ch. 594, § 1; 1980 (Adj. S.), ch. 871, § 3; T.C.A. (orig. ed.), § 67-3021.]

67-6-510. *Computation on trade-ins.*—Where used articles are taken in trade, or in a series of trades, as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference, that is, the price of the new or used article sold less the credit for the used article taken in trade. [Acts 1947, ch. 3, subsec. 6; mod. C. Supp. 1950, § 1248.62 (Williams, § 1328.28); T.C.A. (orig. ed), § 67-3015.]

67-6-511. *Inclusion of lessee's sales in dealers return.*—When any person to whom a “certificate of registration” has been issued under this chapter leases certain departments in his place of business to other persons for the purpose of making sales at retail of tangible personal property or taxable services to consumers and keeps the records and makes and accounts for the collection of the leased department's sales, he may include the sales made by such leased departments in his own tax return and remit the tax due thereon. Provided, however, that in such in-

stances a lessor shall be deemed to be an agent of the lessee and the lessee shall not be relieved of any of his liabilities under this chapter if the lessor defaults therein. [Acts 1947, ch. 3, § 16; C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041.]

67-6-512. *Form of payment.*—All taxes, interest and penalties imposed under this chapter shall be paid to the commissioner at Nashville in the form of remittance required by him. The use of tokens is forbidden and prohibited. [Acts 1947, ch. 3, §§ 10, 14; C. Supp. 1950, §§ 1248.76, 1248.86 (Williams, §§ 1328.32, 1328.36); T.C.A. (orig. ed.), §§ 67-3027, 67-3046.]

67-6-513. *Settlement on quitting business.*—(a) If any dealer liable for any tax, interest or penalty levied hereunder shall sell out his business or stock of goods, or shall quit the business, he shall make a final return and payment within fifteen (15) days after the date of selling or quitting the business. His successor, successors, or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, interest, and penalties due and unpaid until the former owner shall produce a receipt from the commissioner showing that they have been paid, or a certificate stating that no taxes, interest, or penalties are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided, he shall be personally liable for the payment of the taxes, interest, and penalties accruing and unpaid on account of the operation of the business by any former owner, owners, or assigns.

(b) Any violation of the provisions of this section shall be a misdemeanor and punishable as such. [Acts 1947, ch. 3, § 7; C. Supp. 1950, § 1248.63 (Williams, § 1328.29); T.C.A. (orig. ed.), § 67-3025.]

67-6-514. *Excess revenue paid over to commissioner.*—When the tax collected for any period is in excess of that provided by law the total tax collected shall be paid over to the commissioner, less any compensation allowed to the dealer as hereinafter set forth. This provision shall be construed with other provisions of this chapter and given effect so as to result in the payment to the commissioner of the total tax collected if in excess of that provided by law. [Acts 1947, ch. 3, § 5; C. Supp. 1950, § 1248.60 (Williams, § 1328.26); Acts 1955, ch. 51, § 7; 1957, ch. 307, § 2; 1963, ch. 89, § 1; 1969, ch. 3, § 3; 1970 (Adj. S.), ch. 402, § 1; 1971, ch. 117, § 4; T.C.A. (orig. ed.), § 67-3020.]

67-6-515. *When tax becomes delinquent.*—The tax imposed by this chapter shall for each month become delinquent on the twenty-first day of each succeeding month. [Acts 1947, ch. 3, § 11; C. Supp. 1950, § 1248.78 (Williams, § 1328.33); Acts 1955, ch. 242, § 5; impl. am. Acts 1959, ch. 9, § 14; Acts 1971, ch. 285, § 2; T.C.A. (orig. ed.), § 67-3033.]

67-6-516. *Delinquency—Penalties and interest.*—(a) When any dealer shall fail to make any return and pay the full amount of the tax required by this chapter there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of five percent (5%), if the failure is for not more than thirty (30) days with an additional five percent (5%),

for each additional thirty (30) days, or fraction thereof, during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate. In the case of a false or fraudulent return, where willful intent exists to defraud the state of any tax due under this chapter, a specific penalty of fifty percent (50%) of the tax shall be assessed. Provided, however, where a return is delinquent at the time it is filed or becomes delinquent, the minimum penalty may be five dollars (\$5.00), regardless of the amount of tax due or whether there is any tax due.

(b) When an examination of a dealer's books and records indicates that the dealer is deficient in paying the proper tax due for a month, but has paid more tax than is actually due for another month, or is deficient in paying the proper tax on one or more transactions within a month, but has paid more tax than is actually due on other transactions during the same month, or has erroneously paid tax to another dealer, the overpayment or erroneous payment shall be applied to the deficiency before computing any penalty and interest due as a result of such examination, the earliest overpayments offsetting the earliest underpayments for this purpose, and the penalty, if any, being computed on the amounts of underpayments not offset by overpayments.

(c) All penalties and interest imposed by this chapter shall be payable to and collectible by the commissioner in the same manner as if they were a part of the tax imposed. [Acts 1947, ch. 3, § 8; 1949, ch. 245, § 3; C. Supp. 1950, § 1248.66 (Williams, § 1328.30); Acts 1965, ch. 4, § 1; 1969, ch. 164, §§ 1, 2; 1970 (Adj. S.), ch. 360, § 1; 1977, ch. 64, § 1; 1980 (Adj. S.), ch. 885, § 13; 1983, ch. 238, §§ 1, 2; T.C.A. (orig. ed.), § 6-67-3026.]

67-6-517. *Delinquency—Determination and collection tax.*— (a) In the event any dealer fails to make a report and pay the tax as provided by this chapter, or in case any dealer makes a grossly incorrect report, or a report that is false or fraudulent it shall be the duty of the commissioner to make an estimate for the taxable period of retail sales of such dealer, or of the gross proceeds for rentals or leases of tangible personal property by the dealer, estimating the cost price of all articles of tangible personal property imported by the dealer for use or consumption or distribution or storage to be used or consumed in this state, and assess and collect the tax and interest, plus penalty, if such have accrued, on the basis of such assessment, which shall be considered prima facie correct, and the burden to show the contrary shall rest upon the dealer.

(b) If any dealer subject to make and file a return required by any provision of this chapter fails to render such return within the time required or renders a return which is false or fraudulent in that it contains statements which differ from the true gross sales, purchases, leases, or rentals taxable under this chapter or otherwise fails to comply with the provisions of this chapter for the taxable period for which said return is made, the commissioner shall give the dealer ten (10) days' notice in writing requiring the dealer to appear before him or his assistant with such books, records, and papers as he may require relating to the business of the dealer for such taxable period; and said commissioner may require the dealer or the agents and employees of such dealer to give testimony or to answer interrogatories under oath administered by the commissioner or his assistants respecting the sale at retail, the use, consumption, or distribution, or storage for

use or consumption in this state or lease or rental of tangible personal property subject to tax or the failure to make report thereof as provided in this chapter.

(c) If any dealer fails to make any such return or refuses to permit an examination of his books, records or papers, or to appear and answer questions within the scope of such investigation relating to the sale, use, consumption, distribution, storage, lease, or rental of tangible personal property, the commissioner is authorized to make an assessment based upon such information as may be available to him and to issue a distress warrant for the collection of any such taxes, interest or penalties found to be due. Any such assessment shall be deemed *prima facie* correct.

(d) In the event the dealer has imported the tangible personal property and he fails to produce an invoice showing the cost price of the articles as defined in this chapter, which are subject to tax, or the invoice does not reflect the true or actual cost price as defined herein, then the commissioner shall ascertain, in any manner feasible, the true cost price, and assess and collect the tax with interest plus penalties, if such have accrued on the true cost price as assessed by him; the assessment so made shall be considered *prima facie* correct, and the duty shall be on the dealer to show the contrary.

(e) In the case of the lease or rental of tangible personal property, if the consideration given or reported by the dealer does not, in the judgment of the commissioner, represent the true or actual consideration, then the commissioner is authorized to fix the same and collect the tax thereon in the same manner as above provided, with

interest plus penalties, if such have accrued. [Acts 1947, ch. 3, §§ 8, 10; C. Supp. 1950, §§ 1248.67, 1248.69, 1248.70, 1248.74 (Williams, §§ 1328.30, 1328.32); Acts 1965, ch. 285, § 1; T.C.A. (orig. ed.), §§ 67-3029—67-3032.]

67-5-518. *Collection of tax from dealer's debtors.*—

(a) In the event any dealer is delinquent in the payment of the tax herein provided for the commissioner may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such dealer, or owing any debts to such dealer at the time of receipt by them of such notice, and thereafter any person so notified shall neither transfer nor make any other disposition of such credits, other personal property, or debts, until the commissioner shall have consented to a transfer or disposition, or until thirty (30) days shall have elapsed from and after the receipt of such notice. All persons so notified must, within five (5) days after receipt of such notice, advise the commissioner of any and all such credits, other personal property, or debts, in their possession, under their control, or owing by them, as the case may be.

(b) Any violation of the provisions of this section shall be a misdemeanor and punishable as such. [Acts 1947, ch. 3 § 7; C. Supp. 1950, § 1248.63 (Williams, § 1328.29); T.C.A. (orig. ed.), § 67-3025.]

67-6-519. *Lien for taxes.*—(a) The tax herein levied shall be a lien upon all the property of the dealer against whom the same is assessed located in this state and shall be inferior only to state and county ad valorem taxes and to existing liens created by contracts, but it shall be superior to any renewals of existing contract liens.

(b) It shall be the responsibility of the department of revenue to file and have recorded a notice of such lien in the office of the county register of deeds in the county or counties where such property is located, and it shall be the duty of the county register to record notice of such lien in the same manner as other liens are filed in his office; such tax lien shall not be superior to any recorded lien except those subsequently placed of record.

(c) There shall be no fees collected by the county register at the time the notice of such a lien is recorded but he shall extend credit to the department of revenue for such recording fees as are chargeable and submit his bill at the end of each month to the director of the division submitting such notice of lien for recordation in order to obtain payment. [Acts 1947, ch. 3, § 11; C. Supp. 1950, § 1248.78 (Williams, § 1328.33); Acts 1955, ch. 242, § 5; impl. am. Acts 1959, ch. 9, § 14; Acts 1971, ch. 285, § 2; T.C.A. (orig. ed.), § 67-3033.]

67-6-520. *Distress warrants.*—(a) The commissioner of revenue is empowered and it shall be his duty when any tax becomes delinquent under this chapter to issue a distress warrant for the collection of the tax, interest, and penalty from each delinquent taxpayer.

(b) The distress warrant may be addressed and delivered to the sheriff of the county wherein such delinquent taxpayer resides, or has his principal office or place of business, or to the sheriff of any county in which the commissioner has reason to believe property of such delinquent taxpayer may be found.

(c) The sheriff into whose hands such warrant may come, or his deputy, may execute same by the distraint and

sale of personal property belonging to the taxpayer and the proceedings in respect thereto shall be the same as are provided by law for proceedings under an execution at law from a court of record; and the executing officer shall be entitled to the same fees, commissions, and necessary expense of removing and keeping property distrained as in case of an execution from a court of record.

(d) If the officer cannot find any personal property to satisfy the distress warrant, he may levy same upon any real estate in his county belonging to such delinquent taxpayer; and if levied on land, the distress warrant together with the officer's return thereon shall be returned to the circuit court of the county wherein the land lies and the land shall be condemned and sold under the orders of the circuit court in the same manner as in case of the levy on land of an execution issued by a court of general sessions.

(e) Distress warrants issued for the collection of the tax imposed by this chapter may, in the discretion of the commissioner of revenue, be addressed and delivered to an employee or representative of the department of revenue for purposes of execution, and such employee or representative shall have the same powers and authority as a sheriff for the purposes of levying and executing any distress warrants so issued. Such employee or representative shall be entitled to the same fees and costs as would accrue to a sheriff for such services, which fees and costs shall be paid to the department of revenue and deposited in the general fund of the state treasury. [Acts 1947, ch. 3, § 11; C. Supp. 1950, § 1248.78 (Williams, § 1328.33); Acts 1955, ch. 242, § 5; impl. am. Acts 1959, ch. 9; § 14; Acts 1971, ch. 285, § 2; T.C.A. (orig. ed.), § 67-3033.]

67-6-521. *Injunctions.*—The commissioner, with the approval of the attorney general, may file and maintain injunctive proceedings against any dealer who is delinquent or in default under this chapter to enjoin such dealer from doing business during such delinquency or default. [Acts 1947, ch. 3, § 11; C. Supp. 1950, § 1248.78 (Williams, § 1328.33); Acts 1955, ch. 242, § 5; impl. am. Acts 1959, ch. 9, § 14; Acts 1971, ch. 285, § 2; T.C.A. (orig. ed.), § 67-3033.]

67-6-522. *Delinquent dealers — Bond.* — (a) Every dealer licensed to do business in the state of Tennessee who shall become delinquent for more than ninety (90) days in the payment of any sales or use taxes due the state shall, upon notice from the commissioner, post with the commissioner cash or an indemnity bond with good and solvent surety, approved by him, in an amount equal to three (3) times the average monthly sales tax liability or use tax liability of the dealer, conditioned upon the proper payment of retail sales taxes or use taxes for which such dealer may become liable; provided, further, that in the event that any dealer who may become subject to the provisions of this subsection shall fail to post the cash or surety bond, the dealer shall be subject to revocation of any one (1) or more of the certificates of registration held by him as provided by part 6 of this chapter. The bond provided for herein shall run for such time as may be determined by the commissioner.

(b) The commissioner may, in his discretion, require any dealer who has been found in default under this chapter, to execute and file with the department a good-faith bond, with surety approved by the commissioner, in an amount double the defaulted liability, which bond shall

be kept on file with the department and remain in effect such period of time after such default as may be required by the commissioner. ([Acts 1947, ch. 3, §§ 5, 11; C. Supp. 1950, §§ 1248.60, 1248.78 (Williams, §§ 1328.26, 1328.33); Acts 1955, ch. 51, § 7; 1955, ch. 242, § 5; 1957, ch. 307, § 2; impl. am. Acts 1959, ch. 9, § 14; 1963, ch. 89, § 1; 1969, ch. 3, § 3; 1970 (Adj. S.), ch. 402, § 1; 1971, ch. 117, § 4; 1971, ch. 285, § 2; T.C.A. (orig. ed.), §§ 67-3020, 67-3033.]

67-6-523. *Records.*—(a) It shall be the duty of every dealer required to make a report and pay any tax under this chapter, to keep and preserve suitable records of the sales or purchases, as the case may be, taxable under this chapter, and such other books of account as may be necessary to determine the amount of tax due hereunder, and other information as may be required by the commissioner, and it shall be the duty of every such dealer, moreover, to keep and preserve, for a period of three (3) years, all invoices and other records of goods, wares and merchandise, or other subjects of taxation under this chapter; and all such books, invoices, and other records shall be open to examination at all reasonable hours to the commissioner or any of his authorized agents.

(b) Each dealer, as defined in this chapter, shall secure, maintain, and keep for a period of three (3) years a complete record of tangible personal property received, used, sold at retail, distributed or stored, leased, or rented within this state by the dealer together with invoices, bills of lading, and other pertinent records and papers as may be required by the commissioner for the reasonable administration of this chapter, and all such records shall be open for inspection to the commissioner at all reasonable hours. Any dealer subject to the provisions of this chapter

who shall violate the provisions of this subsection shall be guilty of a misdemeanor and upon conviction shall be punished as provided by the general law.

(c) In order to aid in the administration and enforcement of the provisions of this chapter, and collect all of the tax imposed by this chapter, all wholesale dealers and jobbers in this state are required to keep a record of all sales of tangible personal property made in this state, whether such sales be for cash or on terms of credit. The record required to be kept by all wholesale dealers and jobbers shall contain and include the name and address of the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. These records shall be kept for a period of three (3) years and shall be open to the inspection of the commissioner, or his duly authorized assistants, at all reasonable hours. The failure of any wholesale dealer or jobber in this state to keep such records, or the failure of any wholesale dealer or jobber in this state to permit an inspection of such records by the commissioner as aforesaid, shall be deemed a misdemeanor and upon conviction thereof the wholesale dealer or jobber shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200), or imprisonment in the county jail for not less than ten (10) days nor more than thirty (30) days, or both, for the first offense, and for the second or each subsequent offense the penalty shall be double.

(d) For the purpose of enforcing the collection of the tax levied by this chapter the commissioner is specifically authorized and empowered to examine at all reasonable hours the books, records, and other documents of all transportation companies, agencies or firms that conduct

their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers, as provided in this chapter, are importing or are otherwise shipping articles of tangible personal property which are liable for the tax. In the event the transportation company, agency or firm shall refuse to permit such examination of its books, records, and other documents by the commissioner, as aforesaid, it shall be deemed guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500); provided further, that the commissioner shall have the right to proceed in the chancery court for a mandatory injunction or other appropriate remedy to enforce his right, as granted by this section, to an examination of the books and records of transportation companies. [Acts 1947, ch. 3, §§ 8, 9; C. Supp. 1950, §§ 1248.68, 1248.71-1248.73 (Williams, §§ 1328.30, 1328.31); Acts 1955, ch. 242, §§ 2-4; T.C.A. (orig. ed.), §§ 67-3034—67-3037.]

67-6-524. *Importation permits.*—(a) In order to prevent the illegal importation of tangible personal property which is subject to tax in this state, and to strengthen and make more effective the manner and method of enforcing payment of the tax imposed by this chapter, the commissioner is authorized and empowered to put into operation a system of permits whereby any person or dealer as defined in this chapter may import tangible personal property by truck, automobile, or other means of transportation other than a common carrier, without having the truck, automobile, or other means of transportation seized and subjected to legal proceedings for its forfeiture. Such system of permits shall require the person or dealer who desires to import tangible personal property into this

state, which property is subject to tax imposed by this chapter, to apply to the commissioner or his assistant for a permit stating the kind of vehicle to be used, the name of the driver, the license number of the vehicle, the kind or character of tangible personal property to be imported, the date, the name and address of the consignee and such other information as the commissioner may deem proper or necessary to prevent the illegal transportation of tangible personal property into this state. Such permit shall be free of cost to the applicant and may be obtained from the department of revenue or any of its branch offices.

(b) The importation into this state of tangible personal property which is subject to tax, by truck, automobile or other means of transportation other than a common carrier, without first obtaining a permit as described hereinbefore (if the tax imposed by this chapter on the tangible personal property has not been paid), shall be construed as an attempt to evade payment of the tax and the same is prohibited and the truck, automobile or means of transportation other than a common carrier, and the taxable property may be seized by the commissioner in order to secure the same as evidence in a trial and the same shall be subject to forfeiture and sale in the manner provided for in this chapter. [Acts 1947, ch. 3, § 12; C. Supp. 1950, §§ 1248.79, 1248.80 (Williams, § 1328.34); impl. am. Acts 1959, ch. 9, § 14; T.C.A. (orig. ed.), §§ 67-3038, 67-3039.]

67-6-525. *Illegal importation—Confiscation of property.*—(a) Any truck, automobile, or other means of transportation other than a common carrier which is used to import into this state tangible personal property which is subject to tax under this chapter, together with the con-

tents thereof, is declared to be contraband and subject to confiscation unless a permit as hereinabove described was first obtained. The commissioner shall confiscate any such truck, automobile, or other means of transportation other than a common carrier together with its contents whenever the same is found to be importing without permit tangible personal property, the sale or use of which is taxable under this chapter.

(b) Upon seizure for confiscation the commissioner or his representatives shall appraise the value of the vehicle and its contents according to his best judgment and shall deliver to the person, if any, found in possession of such property, a receipt showing the fact of seizure, from whom seized, the place of seizure, a description of the vehicle and contents seized. A copy of the receipt shall be filed in the office of the department of revenue and shall be open to public inspection.

(c) The commissioner or any representative of the department of revenue shall within five (5) days advertise the vehicle and its contents or other property so seized for sale to the highest bidder by one (1) proper notice in a newspaper published in the county where the property is to be sold, if the county has such newspaper; if no newspaper, then by a notice on the courthouse door at least five (5) days prior to the date of sale, containing a description of the vehicle and property to be sold.

(d) Any person claiming any property so seized as contraband goods may, at any time before the sale, file with the commissioner at Nashville a claim in writing requesting a hearing and stating his interest in the articles seized. The commissioner shall set a date for

hearing within ten (10) days from the day the claim is filed. The commissioner is empowered to subpoena witnesses and compel their attendance at the hearing authorized under this chapter. All parties to the proceeding including the person claiming such property shall have the right to have subpoenas issued by the commissioner to compel the attendance of all witnesses deemed by such parties to be necessary for a full and complete hearing. All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileage shall be paid as a part of the cost of the proceeding.

(e) In the event the ruling of the commissioner is favorable to the claimant the commissioner shall deliver to the claimant the vehicle or property so seized. If the ruling of the commissioner is adverse to the claimant the commissioner shall proceed to sell such contraband goods in accordance with the foregoing provisions of this chapter.

(f) The expense of storage, transportation, etc., shall be adjudged as a part of the cost of the proceeding in such manner as the commissioner shall fix pending any proceeding to recover a vehicle or other property seized under this chapter.

(g) The commissioner may order delivery thereof to any claimant who shall establish his right to immediate possession thereof and who shall execute with one or more sureties, approved by the commissioner, and deliver to the commissioner a bond in favor of the state of Tennessee for the payment of a sum double the appraised value thereof as of the time of the hearing; and contain-

ing the further provision that if the vehicle or other property is not returned at the time of the hearing the bond shall stand in lien of and be forfeited in the same manner as such vehicle or other property.

(h) The action of the commissioner may be reviewed by a petition for common law writ of certiorari addressed to the circuit court of Davidson County, which petition shall be filed within ten (10) days from the date the order of the commissioner is made.

(i) Immediately upon the granting of the writ of certiorari the commissioner shall cause to be made, certified, and forwarded to the court a complete transcript of the proceeding in the cause which shall contain all the proofs submitted before the commissioner. All defendants named in the petition desiring to make defense shall answer or otherwise plead to the petition within ten (10) days from the date of the filing of the transcript unless the time be extended by the court.

(j) The decision of the commissioner shall be reviewed by the circuit court solely upon the pleadings, and a transcript of the evidence before the commissioner, and neither party shall be entitled to introduce any additional evidence in the circuit court. The confiscated vehicle or goods shall not be sold pending such review but shall be stored by the commissioner until the final disposition of the case.

(k) Within the discretion of the commissioner the claimant may be awarded possession of the confiscated goods pending the decision of the circuit court under the petition for certiorari, provided the claimant shall be required to execute a bond payable to the state of Ten-

nessee in an amount double the value of the property seized, the sureties to be approved by the commissioner. The condition of the bond shall be that the obligors shall pay to the state the full value of the vehicle or goods seized unless upon certiorari the decision of the commissioner shall be reversed and the property awarded to the claimant.

(l) If no claim is interposed, such vehicle or other goods shall be forfeited without further proceedings and the same sold as hereinabove provided. The above procedure is the sole remedy of any claimant and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas, or in any other manner.

(m) Any funds derived from the sale of confiscated vehicles or other goods shall be distributed or allocated in the same manner as other funds derived from this chapter. [Acts 1947, ch. 3, § 12; C. Supp. 1950, § 1248.81 (Williams, § 1328.34); impl. am. Acts 1959, ch. 9, § 14; T.C.A. (orig. ed.), § 67-3040.]

67-6-526. *Violations—Criminal penalties.*—(a) Any dealer subject to the provisions of this chapter failing or refusing to furnish any return herein required to be made or failing or refusing to furnish a supplemental return or other data required by the commissioner, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding two hundred dollars (\$200) or be imprisoned in the county jail not exceeding sixty (60) days, or shall be punished by both fine and imprisonment in the discretion of the court for any such offense.

(b) Any dealer required to make, render, sign, or verify any return as aforesaid who makes a false or fraud-

ulent return with intent to evade the tax hereby levied shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300) or be imprisoned in the county jail not less than thirty (30) days nor more than three (3) months, or shall be punished by both fine and imprisonment in the discretion of the court.

(c) Any dealer who shall violate any other provision of this chapter, punishment for which is not otherwise herein provided, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100) or imprisoned in the county jail for a period of not less than ten (10) days nor more than thirty (30) days or both fine and imprisonment at the discretion of the court. For a second or subsequent offense the penalty shall be double. [Acts 1947, ch. 3, § 10; C. Supp. 1950, § 1248.77 (Williams, § 1328.32); T.C.A. (orig. ed.), § 67-3042.]

67-6-527. *Taxpayer's remedies.*—Upon any claim of illegal assessment and collection the taxpayer shall have his remedy under §§ 67-1-901—67-1-910, and also shall be allowed to file claims for refund in the manner authorized by the general law. [Acts 1947, ch. 3, § 11; C. Supp. 1950, § 1248.78 (Williams, § 1328.33); Acts 1955, ch. 242, § 5; impl. am. Acts 1959, ch. 9, § 14; Acts 1971, ch. 285, § 2; T.C.A. (orig. ed.), § 67-3033.]

PART 6—DEALER REGISTRATION

67-6-601. *Registration required.*—(a) Every person desiring to engage in or conduct business as a dealer in

this state shall file with the commissioner an application for a "certificate of registration" for each place of business.

(b) Any person who engages in the business of furnishing any of the things or services taxable under this chapter shall likewise apply for and obtain a certificate of registration as provided by this part. [Acts 1947, ch. 3, § 16, C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041.]

67-6-602. — *Certificate of registration.*—(a) Every application for a certificate of registration shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

(b) When the required application has been made the commissioner shall issue to each applicant a separate certificate of registration for each place of business within the state; provided, however, no certificate of registration shall be issued to any person who has been engaged in business in this state, and who has not made a complete

return and payment as provided for in § 67-6-513, or who is delinquent in the payment of any sales or use tax due this state. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(c)(1) The commissioner may refuse to issue any such registration certificate for any place of business where there is reasonable cause to believe there exists a continuity of business enterprise or resumption of a discontinued one involving a transfer of a business and/or a stock of goods in the same or a different location between members of a family, between relatives by blood or marriage, between employer and employee, or former employee, from a partnership or proprietorship to a corporation, or vice versa, where all or some of the persons involved are the same, or that there otherwise exists a conspiracy to defeat the enforcement of this chapter, in the event the transferor is delinquent in the payment of the tax herein provided.

(2) Such refusal may be continued until such time as the transferor shall have complied with the requirements of § 67-6-513 hereof and with all pertinent provisions of this chapter and rules and regulations of the commissioner promulgated hereunder or until full and complete explanatory information requested by the commissioner has been furnished.

(3) Any person aggrieved by such refusal or by the denial of a certificate for reasons stated in the preceding paragraph may, within ten (10) days after written notice

thereof has been mailed or delivered to him, apply to the commissioner for a hearing setting forth in such application a full statement of the grounds on which he intends to rely; provided, that he has filed with the commissioner, at the time of making such application, a surety company bond running to the state in such sum as the commissioner may determine to be appropriate under the circumstances, conditioned upon the payment of all taxes then due and to become due during the pendency of such appeal to the commissioner and during any further judicial appeal.

(4) When such bond is filed the commissioner shall immediately issue such registration certificate.

(5) After such hearing the commissioner shall give written notice of his decision.

(6) In the event of an adverse determination by the commissioner under the provisions of this or the preceding paragraph an appeal therefrom may be made to any court having jurisdiction within ten (10) days after such written notice has been mailed or delivered to him. [Acts 1947, ch. 3, § 16; C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041.]

67-6-603. *Forfeiture of certificate.*—Any person violating the provisions of this part shall forfeit the certificate of registration which shall be revoked in accordance with the provisions of this chapter, and such person shall not be entitled to register under this chapter for a period of twelve (12) months after the revocation shall have become

final. [Acts 1947, ch. 3, § 16; C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041.]

67-6-604. *Revocation of certificate — Procedure.* — Whenever any person fails to comply with any provision of this chapter or any rule or regulation of the commissioner relating thereto, the commissioner, upon hearing, after giving the person ten (10) days' notice in writing, specifying the time and place of a hearing and requiring him to show cause why his certificate of registration should not be revoked, may revoke or suspend any one (1) or more of the certificates of registration held by the person. The notice may be served personally or by certified mail directed to the last known address of the person. The commissioner may designate a hearing officer from the department of revenue to conduct the hearings provided for in this section, who shall make findings of fact, conclusions of law, and proposed orders based thereon. If the commissioner concurs, he shall issue the order; or he may, upon review of the record, make such findings, conclusions, and issue such orders as, in his discretion, the record justifies. [Acts 1947, ch. 3, § 16; C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041.]

67-6-605. *Recall of certificate for excessive administrative costs.* — The commissioner may, in his discretion, on the basis of adequate past experience, recall any certifi-

cate of registration where, in his judgment, the cost of administering the account is disproportionately high as compared to the amount of tax which a taxpayer is remitting or will remit. Such recall shall be reviewable by a petition for a common law writ of certiorari in the chancery court of Davidson County, which petition shall be filed within ten (10) days from the date of such recall. [Acts 1947, ch. 3, § 16; C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041.]

67-6-606. *Operating without certificate—Misdemeanor.*—(a) It shall be a misdemeanor for any dealer as herein defined to engage in business without a proper and valid certificate of registration.

(b) Any person who engages in business as a dealer in this state without a certificate of registration after a certificate of registration has been suspended or revoked, and each officer of any corporation which so engages in business shall be guilty of a misdemeanor and punishable as provided by the general law. [Acts 1947, ch. 3, § 16; C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041.]

67-6-607. *Unauthorized use of certificate—Misdemeanor.*—(a) It shall be a misdemeanor, and punishable as such, for any person having a certificate of registration to use the same for the purpose of purchasing tangible per-

sonal property subject to the tax herein levied except for resale, unless authorized so to do by other provisions of this chapter and the rules and regulations adopted pursuant thereto.

(b) It shall be a misdemeanor for any person who has a certificate of registration to use or consume any tangible personal property purchased or otherwise acquired under the certificate of registration and subject to the privilege taxes herein levied, without paying the privilege taxes. [Acts 1947, ch. 3, § 16; C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041.]

PART 7—LOCAL OPTION REVENUE ACT

67-6-701. *Short title—Nature of tax.*—(a) This part shall be known and may be cited as the “1963 Local Option Revenue Act.”

(b) The tax authorized by this part is and shall be in addition to all other taxes which counties, cities and towns are now authorized to levy, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now authorized to be levied. [Acts 1963, ch. 329, §§ 1, 8; T.C.A., §§ 67-3049, 67-3056.]

67-6-702. *Tax authorized—Rates.*—(a)(1) Any county by resolution of its county legislative body or any incorporated city or town by ordinance of its governing body is authorized to levy a tax on the same privileges subject

to this chapter as the same may be amended, which are exercised within such county, city or town, to be levied and collected in the same manner and on all such privileges but not to exceed one half ($\frac{1}{2}$) of the rates levied therein until otherwise provided by law, and thereafter not to exceed three fourths ($\frac{3}{4}$) of the rates levied therein, provided that, beginning July 1, 1983, the tax levied shall apply only to the first six hundred sixty-seven dollars (\$667) on the sale or use of any single article of personal property; beginning on July 1, 1984, to the first eight hundred eighty-nine dollars (\$889) on the sale or use of any single article of personal property; and beginning on July 1, 1985, to the first one thousand one hundred dollars (\$1,100) on the sale or use of any single article of personal property.

(2) Any five dollar (\$5.00) or seven and one half dollar (\$7.50) tax limit on the sale or use of any single article of personal property in effect at present may be removed, and, by resolution in the case of counties and ordinance in the case of municipalities, the tax at the existing rate may, instead, be made to apply to the bases provided in subdivision (a)(1) of this section. The resolution or ordinance shall be passed at least twice at two or more consecutive public meetings, not more than one of which may be held on any single day. Notice of the meetings and of the fact that this matter is on the agenda of the meetings shall be published at least once in a newspaper of general circulation throughout the jurisdiction involved not less than seven (7) days before the first of the meetings.

(3) Once any local sales tax limit has been removed and the tax rate applied to the base provided in subdivision

(a)(1) of this section, future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body. For any municipality or county which implements a local sales tax for the first time after May 17, 1983, or during the phase-in period provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body.

(b) Notwithstanding other provisions of this chapter, with respect to industrial and farm machinery as defined in § 67-6-102, and with respect to water sold to or used by manufacturers at the state tax rate of one percent (1%) as authorized in § 67-6-206, the local tax thereon shall be imposed at the rate of one third of one percent ($.33\frac{1}{3}\%$) whenever the rate of the local tax does not exceed one percent (1%) and at the rate of one half of one percent ($.5\%$) whenever the rate of the local tax exceeds one percent (1%). The maximum local tax on the sale or use of any single article of industrial or farm machinery shall be as provided hereinabove. [Acts 1963, ch. 329, § 2; 1968 (Adj. S.), ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972 (Adj. S.), ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974 (Adj. S.), ch. 675, § 2; 1975, ch. 316, § 2; 1976 (Adj. S.), ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978 (Adj. S.), ch. 592, § 2; impl. am. Acts 1978 (Adj. S.), ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980, (Adj. S.), ch. 886, § 2; 1981, ch. 182, § 2; 1982 (Adj. S.), ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050.]

67-6-703. *Priority of county levy.*—(a) The levy of the tax by a county shall preclude, to the extent of the coun-

ty tax, any city or town within such county from levying the tax, but a city or town shall at any time have the right to levy the tax at a rate equal to the difference between the county tax and the maximum rate authorized herein. For cities and towns having territory in more than one county, the term "cities and towns" is defined as that part of their territory in which they are not precluded by a county tax.

(b) If an ordinance levying the tax herein authorized is adopted by a city or town prior to adoption of the tax by the county in which the city or town is located, the effectiveness of the ordinance shall be suspended for a period of forty (40) days beyond the date on which it would otherwise be effective under the charter of the city or town. If during this forty-day period, the county legislative body adopts a resolution to levy the tax at least equal to the rate provided in such ordinance, the effectiveness of the ordinance shall be further suspended until it is determined whether the county tax is to be operative, as provided in § 67-6-706. If the county tax becomes operative by approval of the voters as provided in § 67-6-706, the ordinance shall be null and void, but if the county tax does not become operative the ordinance shall become effective on the same date that the county tax is determined to be non-operative, and the election required by § 67-6-706 shall be held. After initial adoption of the tax by a county or a city or town therein, the tax rate may be increased by a city, town or county under the same procedure. If the tax levied by a county legislative body is finally determined to be non-operative, such action shall not preclude subsequent action by the county to adopt the tax at a rate at least equal to the city or town tax rate, in which

event the city or town tax shall cease to be effective; provided, however, that the city or town shall receive from the county tax the same amounts as would have been received from the city or town tax until the end of the current fiscal year of the city or town. [Acts 1963, ch. 329, § 3; 1968 (Adj. S.), ch. 488, § 2; T.C.A., § 67-3051.]

67-6-704. *Exemptions.*—No county or incorporated city or town is authorized to levy any tax on the sale, purchase, use, consumption or distribution of electric power or energy, or of natural or artificial gas, or coal and fuel oil. [Acts 1963, ch. 329, § 2; 1968 (Adj. S.), ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972 (Adj. S.), ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974 (Adj. S.), ch. 675, § 2; 1975, ch. 316, § 2; 1976 (Adj. S.), ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978 (Adj. S.), ch. 592, § 2; impl. am. Acts 1978 (Adj. S.), ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980 (Adj. S.), ch. 886, § 2; 1981, ch. 182, § 2; 1982 (Adj. S.), ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050.]

67-6-705. *Tax subject to referendum.*—(a) The operation of the resolution or ordinance authorized in § 67-6-702 shall be subject to approval of the voters as required in § 67-6-706 and to the other provisions of this part.

(b) Nothing herein contained shall be deemed to permit an increase in the privilege tax rates hereby authorized, without the ratification thereof in the manner provided in § 67-6-706, regardless of the nature of any previous call and regardless of future action of the general assembly regarding the levy of the tax authorized by this chapter.

(c) Any amendment to any existing tax rate shall be subject to approval of the voters of the city or county

in the same manner as is required for the initial adoption of the tax; provided, however, that a change in the limitation on the amount of the tax made in accordance with § 67-6-702(a)(2) shall not be subject to approval of the voters of the city or county. [Acts 1963, ch. 329, § 2; 1968 (Adj. S.), ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972 (Adj. S.), ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974 (Adj. S.), ch. 675, § 2; 1975, ch. 316, § 2; 1976 (Adj. S.), ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978 (Adj. S.), ch. 592, § 2; impl. am. Acts 1978 (Adj. S.), ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980 (Adj. S.), ch. 886, § 2; 1981, ch. 182, § 2; 1982 (Adj. S.), ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050.]

67-6-706. *Referendum*.—(a)(1) Any ordinance or resolution of a county or of a city or town levying the tax under authority of this part shall not become operative until approved in an election herein provided in the county, or the city or town, as the case may be.

(2) The county election commission shall hold an election thereon, providing options to vote “FOR” or “AGAINST” the ordinance or resolution, not less than forty-five (45) days nor more than sixty (60) days after the receipt of a certified copy of such ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative.

(3) If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns. Provided, however, that no tax shall be collected under any such ordinance or

resolution until the first day of a month occurring at least thirty (30) days after the operative date.

(b)(1) If a county legislative body adopts a resolution to levy the tax at the same rate that is operative in a city or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of such city or town. If the county tax is at a higher rate than the rate of the city or town tax, the election shall be also open to the voters of the city or town.

(2) Should any county or city or town hold an election hereunder, and the ordinance or resolution is rejected, no other election thereon shall be held by such county, city or town for a period of six (6) months from the date of the holding of such prior election, except that in those counties of the state having a population of not more than seven hundred fifty thousand (750,000) nor less than seven hundred thousand (700,000) and not more than two hundred seventy-eight thousand (278,000) and not less than two hundred fifty thousand (250,000) according to the federal census of 1970 or any subsequent federal census, in case of rejection, the limitation period on subsequent elections shall be one (1) year from the date of the holding of such prior election. [Acts 1963, ch. 329, § 5; 1967, ch. 113, § 1; 1968 (Adj. S.), ch. 488, § 3; 1971, ch. 83, § 1; 1972 (Adj. S.), ch. 455, § 1; 1982 (Adj. S.), ch. 591, § 1; T.C.A., § 67-3053.]

67-6-707. *Petition for tax.*—A resolution or ordinance levying the tax authorized may be initiated by petition of the voters in the following manner:

(1) The petition shall be addressed to the county legislative body or the governing body of the city or town requesting that a resolution or ordinance be adopted levying the tax and shall state the rate of the tax, whether the tax is to be collected by the county, city or town, or by the department of revenue of the state, and shall specify the officer against whom suit for the recovery of any tax illegally assessed or collected shall be brought.

(2) The petition shall be signed by at least a number of registered voters in the taxing jurisdiction equal to ten percent (10%) of the total number of registered voters in the taxing jurisdiction on the date the petition is filed. Provided, a petition requesting a resolution of the county legislative body may not be signed by a registered voter in a city or town where a tax herein authorized is operative equal to that levied by the resolution, and the registered voters therein shall not be considered in arriving at the required percentage.

(3) A petition requesting a resolution shall be filed with the county clerk, a petition requesting an ordinance with the chief clerical officer of the city or town, and a photographic copy of the petition shall be filed at the same time with the county commissioners of elections who shall be the judges of the sufficiency of the petition.

(4) If within thirty (30) days from the filing of a petition a resolution or ordinance is not adopted as requested and a certified copy filed with the commissioners of elections, the petition shall constitute a resolution or ordinance, and the commissioners of elections shall hold an election thereon as in § 67-6-706(a). [Acts 1963, ch. 329, § 5; 1967, ch. 113, § 1; 1968 (Adj. S.), ch. 488, § 3; 1971, ch. 83, § 1; 1972 (Adj. S.), ch. 455, § 1; T.C.A., § 67-3053.]

67-6-708. *Termination of tax.*—The tax imposed in this part shall remain in effect in the county or city on a perpetual basis as permitted by law, unless the city or county by ordinance or resolution respectively shall provide for a specific termination date. The city or county by ordinance or resolution respectively may provide for a specific period of time during which the tax shall be in effect. [Acts 1963, ch. 329, § 2; 1968 (Adj. S.), ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972 (Adj. S.), ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974 (Adj. S.), ch. 675, § 2; 1975, ch. 316, § 2; 1976 (Adj. S.), ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978 (Adj. S.), ch. 592, § 2; impl. am. Acts 1978 (Adj. S.), ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980 (Adj. S.), ch. 886, § 2; 1981, ch. 182, § 2; 1982 (Adj. S.), ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050.]

67-6-709. *Repeal of tax.*—Any ordinance or resolution of a county, city or town adopted in accordance with this part may be repealed in the same manner as provided herein for its adoption; provided, that any election for the repeal of a county tax shall be open to the voters of the entire county. [Acts 1963, ch. 329, § 7; T.C.A., § 67-3055.]

67-6-710. *Collection and administration.*—(a)(1) In collecting and administering the tax levied under the authority of this part, counties, cities and towns shall have all the powers which the commissioner of revenue has in collecting and administering the state sales tax.

(2) Rules and regulations promulgated by the commissioner of revenue may be adopted by reference, and penalties and interest for delinquencies imposed equal to the rates provided in § 67-6-516.

(b)(1) When so provided in the resolution or ordinance of adoption, the department of revenue of the state of Tennessee shall collect such tax concurrently with the collection of the state tax in the same manner as the state tax is collected, provided that the department has determined that such collection of the tax is feasible, and has promulgated rules and regulations governing such collection.

(2) The department shall remit the proceeds of the tax to the county, city or town levying the tax, less a reasonable amount of percentage as determined by the department to cover the expenses of administration and collection.

(c) The county, city or town shall furnish a certified copy of the adopting resolution or ordinance to the department of revenue in accordance with regulations prescribed by the department.

(d)(1) Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in § 67-6-527, it being the intention of the legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected be conformed to apply to the recovery of taxes illegally assessed and collected under the authority of this part.

(2) Notice of any tax paid under protest shall be given to the county legislative body or the governing body of the city or town.

(3) The resolution or ordinance levying the tax shall designate the county or municipal officer against whom suit may be brought for recovery in the event the tax is

collected by the department of revenue. [Acts 1963, ch. 329, § 6; T.C.A., § 67-3054.]

67-6-711. *Collection of local sales tax by state.*—Notwithstanding any provisions of this chapter to the contrary, a county legislative body or the governing body of any incorporated city or town may authorize, by resolution or ordinance, the state to collect a local sales tax previously authorized and approved pursuant to the provisions of this part. Such authorization by any county legislative body or by the governing body of any incorporated city or town shall be fully effective without necessity of a referendum on such resolution; provided, however that no tax shall be collected under any such authorization until the first day of a month occurring at least thirty (30) days after receipt of a certified copy of such resolution or ordinance by the commissioner of revenue. [Acts 1963, ch. 329, § 5; 1967, ch. 113, § 1; 1968 (Adj. S.), ch. 488, § 3; 1971, ch. 83, § 1; 1972 (Adj. S.), ch. 455, § 1; 1982 (Adj. S.), ch. 591, § 1; T.C.A., § 67-3053.]

67-6-712. *Distribution of revenue.*—The tax levied by a county under this part shall be distributed as follows:

(1) One-half ($\frac{1}{2}$) of the proceeds shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed; and

(2) The other half ($\frac{1}{2}$) shall be distributed as follows:

(A) Collections for privileges exercised in unincorporated areas, to such fund or funds of the county as the governing body of the county shall direct;

(B) Collections for privileges exercised in incorporated cities and towns, to the city or town in which the privilege is exercised;

(C) Provided, however, that a county and city or town may by contract provide for other distribution of the half ($\frac{1}{2}$) not allocated to school purposes. [Acts 1963, ch. 329, § 4; 1967, ch. 90, § 1; T.C.A., § 67-3052.]

UNITED STATES
CODE

Title 33, U.S.C.:

§ 1. Regulations by Secretary of Army for navigation of
waters generally

It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his judgment the public necessity may require for the protection of life and property, or of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. Such regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall violate such regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court of the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding \$500, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.

Any regulations prescribed by the Secretary of the Army in pursuance of this section may be enforced as provided in section 413 of this title, the provisions whereof are made applicable to the said regulations.

§ 4. Water gauges on Mississippi River and tributaries

The Secretary of the Army is authorized and directed to have water gauges established, and daily observations made of the rise and fall of the Mississippi River and its tributaries.

For the purpose of securing the uninterrupted gauging of the waters of the Mississippi River and its tributaries, as provided for in this section, upon the application of the Chief of Engineers, the Secretary of the Army is authorized to draw his warrant or requisition, from time

to time, upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of \$9,600.

§ 419. Regulation by Secretary governing transportation and dumping of dredgings, refuse, etc., into navigable waters; oyster lands; appropriations

The Secretary of the Army is authorized and empowered to prescribe regulations to govern the transportation and dumping into any navigable water, or waters adjacent thereto, of dredging, earth, garbage, and other refuse materials of every kind or description, whenever in his judgment such regulations are required in the interest of navigation. Such regulations shall be posted on conspicuous and appropriate places for the information of the public; and every person or corporation which shall violate the said regulations, or any of them, shall be deemed guilty of a misdemeanor and shall be subject to the penalties prescribed in sections 411 and 412 of this title, for violation of the provisions of section 407 of this title: *Provided*, That any regulations made in pursuance hereof may be enforced as provided in section 413 of this title, the provisions whereof are made applicable to the said regulations: *Provided further*, That this section shall not apply to any waters within the jurisdictional boundaries of any State which are now or may hereafter be used for the cultivation of oysters under the laws of such State, except navigable channels which have been or may hereafter be improved by the United States, or to be designated as navigable channels by competent authority, and in making such improvements of channels, the material dredged shall not be deposited upon any ground in use in accordance with the laws of such State for the cultivation of oysters, except in compliance with said laws: *And provided further*, That any expense necessary in executing this Section may be paid from funds available for the improvement of the harbor or waterway, for which regulations may be prescribed, and in case no such funds are available the said expense may be paid from appropria-

tions made by Congress for examinations, surveys, and contingencies of rivers and harbors.

§ 622. Contracts, etc., for implementation of projects for improvements and for dredging and related work by private industry; performance of work by federally owned fleet and transition to use of private industry; requirements, standards, and study relating to transition and accompanying reduction of federally owned fleet.

(a) The Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the "Secretary"), in carrying out projects for improvement of rivers and harbors (other than surveys, estimates, and gagings) shall, by contract or otherwise, carry out such work in the manner most economical and advantageous to the United States. The Secretary shall have dredging and related work done by contract if he determines private industry has the capability to do such work and it can be done at reasonable prices and in a timely manner. During the four-year period which begins on April 26, 1978, the Secretary may limit the application of the second sentence of his subsection for work for which the federally owned fleet is available to achieve an orderly transition to full implementation of this subsection.

(b) As private industry reasonably demonstrates its capability under subsection (a) of this section to perform the work done by the federally owned fleet, at reasonable prices and in a timely manner, the federally owned fleet shall be reduced in an orderly manner, as determined by the Secretary, by retirement of plant. To carry out emergency and national defense work the Secretary shall retain only the minimum federally owned fleet capable of performing such work and he may exempt from the provisions of this section such amount of work as he determines to be reasonably necessary to keep such fleet fully operational, as determined by the Secretary, after the minimum fleet requirements have been determined. Notwithstanding the preceding sentence, in carrying out the

reduction of the federally owned fleet, the Secretary may retain so much of the federally owned fleet as he determines necessary, for so long as he determines necessary, to insure the capability of the Federal Government and private industry together to carry out projects for improvements of rivers and harbors. For the purpose of making the determination required by the preceding sentence the Secretary shall not exempt any work from the requirements of this section. The minimum federally owned fleet shall be maintained to technologically modern and efficient standards, including replacement as necessary. The Secretary is authorized and directed to undertake a study to determine the minimum federally owned fleet required to perform emergency and national defense work. The study, which shall be submitted to Congress within two years after April 26, 1978, shall also include preservation of employee rights of persons presently employed on the existing federally owned fleet.
